

Debt and Credit in Early Modern Scotland:
The Grandtully Estates 1650-1765

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DECLARATION

I declare that this thesis is the
result of my own work.

ABSTRACT

This thesis examines the significance and function of debt and credit in the Scottish economy during the latter half of the seventeenth and first half of the eighteenth-century.

Part I discusses the nature of debt/credit transactions and relationships and introduces the classification model formulated as the basis for analysis of the data. There follows a consideration of several aspects of the development of credit facilities in the Scottish economy. This section is intended to provide a backdrop for the detailed local analysis which follows. A broad division of the various components of the subject into procedural and structural elements - Instruments of Exchange and Indebtedness in Society - enabled a picture of the Scottish approach to debt to be constructed. The role of credit in the lives of the peasantry and the landowning classes is discussed with emphasis being given to its significance amongst the rural population.

Three spheres of exchange are identified, questions are posed and hypotheses formulated: the most fundamental being the proposition that the need for credit was not merely a reflection of liquidity crises, but that Scotland's rural economy had developed an overlay of sophistication which enabled credit facilities to function as a means of increasing capital. Finally, with particular reference to the function of Sanctuary, this section examines the unique approach of the legislature, and people of Scotland, to the whole subject of debt and indebtedness thereby completing an overview of debt in early modern Scotland.

Part II begins with a description of the Grandtully Estates as a source base and outlines their geographical and economic characteristics. This in turn provides a backdrop for the last section of the thesis which is a case-study of the peasant credit market on these estates. There follows an examination of the source material - Small Claims Commissary Court Processes, Testamentary material and Estate Records. The function, effects and limitations of the various legal institutions, particularly the Dunkeld Commissary Court, in which the data were recorded are considered. Then the data themselves are analysed using the classification model and by dividing them on the basis of their social and geographical structures. Various hypotheses which were set out in the foregoing sections are tested and the function, necessity and ubiquity of small debts in that society are described and, at least in part, explained.

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Notes on Terminology and Style

In order to describe that group of people on which much of this thesis is focused the term 'peasant' has been consciously chosen as the most appropriate in this context. It is used here to include those who are hired workers, local artisans and all members of the farming community at tenant level or below.¹ Where further refinement is necessary individual or group status is specified in the text. Alternatives such as 'commonality', 'populace', 'lower classes or echelons' have been employed where no distinction between rural and urban dwellers was required, elsewhere the term 'peasantry' has been used. Although the debate concerning its usage will no doubt continue there is no readily available substitute:

"...it can be suggested that when historians use 'peasant' as a descriptive term for rural society in general, they are using it in an unhistorical way. On the other hand, what are the alternatives?"²

Throughout the text the idiosyncracies of seventeenth-and eighteenth-century spelling and punctuation have been retained in quotations from original source material. Where contractions appeared in the original document the missing letters have, for clarity, been inserted inside

¹ Similar to the definition of H A Landsberger (1974) in *Rural Protest: Peasant Movements and Social Change*.

² Beckett, J V (1984) *The Peasant in England: A Case of Terminological Confusion*, *Ag Hist Rev* Vol 32, p123

square brackets, super-script letters have also been retained in quotations. Elsewhere spelling has either been standardised or modernised as appropriate. To ease reading figures have in some cases been changed from Roman to Arabic. Throughout the thesis amounts of money and values are quoted in pounds Scots; where this was inappropriate 'sterling' is specified in the text.

Abbreviations

Throughout the figures and tables the initials of the four estates are used together as GSMA (Grandtully, Strathbran, Murthly Airntully) to indicate the whole Estate Group, or separately to represent each estate.

Ag Hist Rev	Agriculture History Review
APS	Acts of Parliament, Scotland
BAR	British Archaeological Reports
c in APS	clause
CC	Commissary Court (in document references from the SRO)
GD	Gifts and Deposits (in document references from the SRO)
l	pounds
Leg Burg	<i>Leges Burgorum Scocie</i> (Laws of the Burghs of Scotland)
NLS	National Library of Scotland
OSA	Old Statistical Account
p	pence
Reg Maj	<i>Regiam Majestatem</i>
Reg Privy Coun Scot	Register of the Privy Council of Scotland
s	shillings
SGM	Scottish Geographical Magazine
SHS	Scottish Historical Society
SRO	Scottish Record Office
SRS	Scottish Record Society
STS	Scottish Text Society
Trans Cum & West Arch & Antiq Soc	Transactions of the Cumberland & Westmorland Archaeological and Antiquarian Society

INTRODUCTION

"Even when seen in isolation, the history of Scotland before the eighteenth century has concentrated on the crown, nobility, church, legal and governmental institutions and foreign relations."¹

During the past two decades much has been done to rectify this situation by both historians and historical geographers. Although the proportion remains relatively small, many books, articles and theses have appeared in the last few years which have moved away from the previous unbalanced, and for Scottish studies, unhealthy bias. No longer are historians and geographers shielding themselves with the received wisdom that there is a paucity of sources relating to, for example, agriculture or the life-style of Scotland's lower classes. There is instead a growing awareness of the vast corpus of untouched and unconsidered material in Scotland's archives. It is hoped that this thesis will usefully introduce the value of material extracted from some of these barely used sources - certainly many of the Commissary Court records examined here had not seen the light of day since before the SRO began cataloguing its holdings.

The principal concern of this work grew out of a realisation that there was no published work available which examined the role of debt and credit in early

¹ Houston, R A (1981) *Aspects of Society in Scotland and North East England, c1550-c1750: Social Sturcture, LIteracy and Geographical Mobility*. University of Cambridge Ph D, pp2-3

modern rural Scotland. Originally the intention had been to investigate the agricultural economy of an estate group on a much wider basis, but having identified this lacuna in Scottish historical research, the focus of this study altered. Almost immediately the aim of the work diverged to follow two identifiable paths; one very specific and restricted, the other synoptic.

The initial aim had been to examine the subject of debt and credit in the peasant economy of one estate system - the Grandtully Estate Group - but as work progressed it soon became apparent that there was no context into which such a study could be placed - either it would have to stand alone as a very restricted case-study or a wider context would have to be provided.

By choosing the latter course the scope and ambition of the thesis became much more broadly based than was originally intended; with a second, but parallel aim to produce a conspectus which surveyed the development and function of debt and credit in Scotland. Here the primary concern was with the 'idea' of debt and indebtedness, the mechanics and function of debt and credit and society's approach to, and attitudes towards, indebtedness itself. Such a synthesis has hitherto not been produced in a Scottish context.

Pursuing this broader approach inevitably rendered the

more detailed empirical study of the estate group a less substantial component of the whole than had been originally intended. However, it has enabled a clearer and more complete view of the constituent parts of the notion of debt to be established. The basic aim of this study is to examine the role of debt in Scottish rural society in the period 1650-1765 and, thereby, to begin to fill an important gap in our knowledge of the 'peasant economy'. It could not do so, however, without reference to more general attitudes towards debt and indebtedness and how they had developed or without a clear definition of the different reasons for indebtedness and types of debt which were being incurred. Part I offers such a definition by classifying debt into various Categories, Forms and Types. This model of classification is used throughout the study; in Part I, for the definition and clarity of what is meant by debt whilst examining the broader subject area, and in Part II for classifying the data examined in the case-study.

Part I not only provides a frame of reference for the case-study to follow, it stands in its own right as an examination of the need for, mechanisms of and attitudes towards indebtedness in Scotland. The latter, which is looked at through a study of the development, use and persistence of sanctuary and the parallel evolution of relevant legislation in Scotland, is seen as a particularly important facet of this work. Social attitudes to

indebtedness in Scotland have simply not been discussed in the work of modern historians and yet, from the little work done here, the evidence seems to point to an approach which, if not unique, was certainly rather different to that adopted in England and parts of Europe.

Although Scotland's economy has been discussed and studied over many years, the vast majority of writers have addressed the problems of interpreting the National Economy² or the intricacies of one or two particular industries.³ Very few have given more than a cursory glance towards the wealth of material which relates to the 'Economy of the Individual'. There are, of course, exceptions - the recent work of the Whytes and of McFaulds⁴ being the most noteworthy. These authors are quite explicitly concerned with the nature of individuals' indebtedness within agricultural communities. Nevertheless, neither of these have addressed the more general questions relating to the function of and attitude towards, debt which are discussed in Part I. Despite many writers indicating an interest in the credit system, few have done more than examine one or two cases

² Including for example, B Lenman's *An Economic History of Modern Scotland* (1977) or T Dickson's *Scottish Capitalism* (1980).

³ For example, I Donnachie's *A History of Brewing in Scotland* (1979)

⁴ Whyte, I D & K A (1988) *Debt and Credit, Poverty and Prosperity in a Seventeenth-century Scottish Rural Community*, in Mitchison, R & Roebuck, P (eds) *Economy and Society in Scotland and Ireland 1500-1939*, pp70-79 and McFaulds, J (1980) *Forfarshire Landowners and Their Estates 1660-1690*. University of Glasgow Ph D

of indebtedness,⁵ the role of debt has remained largely unexplored in the context of Scottish rural history. It is to rectifying this particular imbalance that the first half of this thesis is addressed.

Debt and credit comprise a complex subject; an array of endless networks which extend socially and geographically throughout the matrix of rural society. Each strand of these networks represents a relationship with spatial, social and economic characteristics. Goubert's comments on peasant indebtedness in France provide some insight into the extent, variety and frequent ambiguity of these debt/credit relationships:

"It would require a whole volume on its own to study the question of peasant indebtedness in any detail - an important question, though little explored....Every small peasant was indebted to one or more *laboueurs*, who lent him horses and working stock, carted his produce, sold or advanced him lamb, timber, beans, wheat. Every small peasant owed his landlord arrears of rent and for advances of seed or money. His debts to the *seigneur* were not so great; but he always owed substantial amounts to the tax-collector....[also]..there were his debts to the blacksmith, wheelwright, tailor, weaver, village, shepherd, the religious confraternity, the school master, not to mention the innkeeper...[and]..the rural moneylenders"⁶

It is Goubert's contention that only through the study of indebtedness can there emerge any real understanding of the changing conditions of the peasantry in seventeenth century France. The same situation pertains

⁵ Including: Gray, M (1957); Mitchison, R (1978 & 1983); Shaw, F (1980); Sanderson, M H B (1982) and Wormald, J (1981).

⁶ Goubert, P (1956) *The French Peasantry of the Seventeenth Century: A Regional Example, Past & Present* 10, p71

in the Scottish context. In fact, the study of debt and credit in early modern Scotland may be an even more vital tool in the study of the peasant economy than elsewhere in Europe. As a small country on the fringes of the European markets, Scotland still had a comparatively unsophisticated economy, was short of specie and, as will be shown, depended on credit at every level of trade. To examine the debt/credit relationships which existed as an elemental part of the peasant economy, case-studies are essential and are necessarily localised and detailed in character. By focusing on a group of estates, Part II of this thesis attempts to provide such a study and offer a perspective from which conclusions can be drawn about debt and credit in rural Scotland.

Based on four estates owned by the Steuarts of Grandtully in Perthshire, it examines the limitations and potential of the available sources in some detail - particularly the Small Claims Commissary Court Processes which offer an enormous, largely untapped source of data, and the Commissary Court Testaments which have been more widely considered. Attention is also paid to the integration of the various source materials examined. The Processes, Testaments and Estate records were produced as discrete units of documentary records for which amalgamation was never foreseen nor intended. However, for today's researcher the compilation of the data from such previously unrelated sources can provide information and

insights hitherto unrecognised. In addition to considering the sources themselves, chapter 5 examines some of the possibilities which such integration produces and how, in fact, such disparate sources can be drawn together. As in Part I the context of the sources is also seen as an important component of the study; specifically the court and legal systems from which these documents emanated and the agricultural economy in which the debts were being incurred or credit extended. The characteristics of both of these contextual systems are discussed and their influence on the documentary material and debt types considered.

The last section of the thesis examines the data themselves. It looks at the characteristics of the debts incurred, asks why they were enabled or undertaken and suggests what this may have meant in the peasant economy. Additionally, this section discusses the relevance of the debt/credit network in terms of communication socially and geographically.

The approach to this thesis has to a large extent been source-led. The recognition of a need to look at the credit market was purely conceptual, the means by which it could be done was dependent on the available sources and the techniques which could be applied for their analysis. The approach chosen and method followed were founded on the classification of debt/credit transactions

into a rigid framework and hierarchy to enable analysis and discussion of an otherwise amorphous mass. Nevertheless, the social context in which these transactions occurred has, throughout the study, been viewed as fundamentally important - the idiosyncracies and vagaries of people cannot be snugly fitted into categories or classifications - but their existence must be recognised.

PART I

Chapter 1: Debt, Credit and Usury

1.1: The Concept and Classification of Debt

Economic relationships are a fundamental part of any system of social relationships; the latter cannot be understood without recourse to the former. In Scotland it has long been the received wisdom that there was "a lack of rigid class distinctions",¹ that "there were a multiplicity of links between the nobility and the rest of society",² such that all classes were closely integrated by a common economic interest. However, little effort has been made to examine the distribution of wealth; its gradation throughout rural society has been largely ignored, perhaps as suggested by the Whytes, because it has been assumed that there was, in fact, little variation.³ Neither has there been much attempt to examine the networks of economic inter-relationships which penetrated both vertically and horizontally throughout the social matrix.

¹ Houston, R A (1981) Aspects of Society in Scotland and North-East England, c1550-1750: Social Structure, Literacy and Geographical Mobility. University of Cambridge Ph D Thesis, p11

² Lenman, B (1977) An Economic History of Modern Scotland 1660-1976, p33

³ Whyte, I & K (1988) Debt and Credit, Poverty and Prosperity in a Seventeenth Century Scottish Rural Community, in Mitchison, R & Roebuck, P (eds) Economy & Society in Scotland & Ireland 1500-1939, p3

The relatively undifferentiated economy of 17th and early 18th century Scotland forced economic interaction to occur at a very personal level. Central to the economic systems of exchange and circulation was the credit/debt transaction; by examining the forms, causes, distribution, and role of this transaction in rural society, understanding of social and economic conditions will be enhanced. Changes in the distribution of capital - both financial and material, evidence relating to monetization, the impact of seasonal variation on social conditions, the changing significance of material goods used as currency, and the economic constraints and limitations within which the agricultural community functioned will, to varying degrees, become more understandable or apparent.

In order to understand and analyse the debt/credit transaction, the idea of debt, its mechanisms and its functions must be examined:

A debt, "That which is owed or due; anything (as money, goods or service) which one person is under obligation to pay or render to another".⁴

In Scotland debts are defined, in law, as "mere rights to demand payment of money at a stipulated time"⁵

Obviously the legal and dictionary meanings approach debt

⁴ From the Shorter Oxford English Dictionary 3rd ed 1983.

⁵ Wilson, W H (1982) The Law of Scotland Relating to Debt, p1

from opposing positions, although a debt is, nonetheless, an apparently straightforward relationship involving two parties: the debtor and the creditor. Stephen Monteage's simple definition of the parties as he saw them in 1682 still stands today:

DEBITOR.....signifieth a Debtor, or one that oweth, or is in Debt.

CREDITOR.....signifieth one that crediteth or trusteth another with Money or Goods lent or deposited in the hands of a Borrower, or Debtor, or Friend...⁶

However, whilst bearing in mind that every debt/credit transaction is founded on the uncomplicated debtor/creditor relationship described by Monteage, the problem of understanding the complex forms and causes of indebtedness must be addressed.

The apparent simplicity of the idea of debt and credit is deceptive. It is an idea with which we are all familiar; taking its form as the overdraft, monthly mortgage^{payment}, or as the more nebulous feeling of indebtedness to parents for one's upbringing or for the favour from a friend or acquaintance. Equally, we are all aware of the nagging feeling of irritation when we feel someone owes something to us and the annoyance of the non-payment of a loan made

⁶ Monteage, S (1682) Debitor and Creditor Made Easie, p1

in good faith. Yet, despite this familiarity the different characteristics and mechanics of the debt-credit relationship are remarkably difficult to distinguish and classify. The main problems lie in the vast number of reasons which may cause a debt to be incurred and in identifying the different forms which the ensuing transaction may take; the forms themselves may overlap in one transaction and there may be many reasons for indebtedness within that transaction.

Without some form of classification questions cannot be asked of the data and inductive generalisations made. However, in devising the model, described below, the danger of classifying on the basis of criteria which would limit the questions which could be asked was borne in mind. For this reason the data were grouped on the basis of four different types of characteristic: locational, social, economic form and reason for incurrence. Had it been possible, classification on the basis of motivation would have been extremely useful but this was precluded by the limitations of the data. As will be discussed later, the reason 'why' someone enables or undertakes a debt is more important than the debt itself in helping to explain the function of a credit system. However, although it was not possible to classify on the basis of motive, it is possible to infer why certain credit arrangements were made on the basis of the other observed characteristics.

For the purposes of this study a simple classification system was devised which allowed each debt transaction to be placed within a Category, a Form and a Type thus making the data less of an amorphous mass and more of an approachable structured whole.

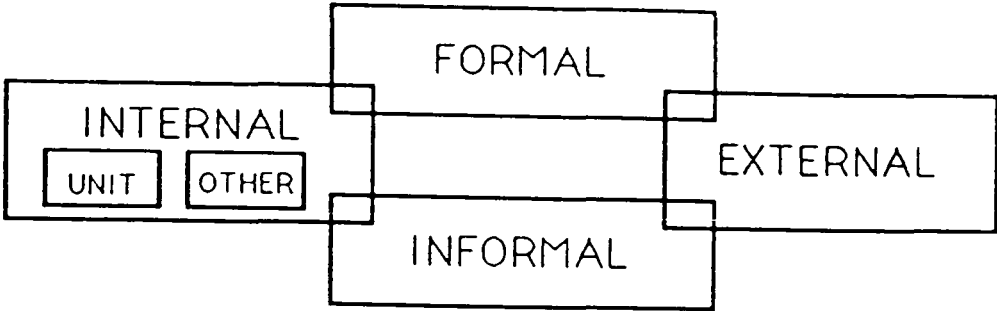
The Categories merely reflect the dichotomous nature of debts locationally and socially. The Forms and their sub-divisions have been identified on the basis of the nature of the transaction, being defined by the characteristic elements of the debtor-creditor agreement. Debt Types, on the other hand, are identified by the manner in which debts were incurred, the reasons, but not the motivation, for extending credit.

The classification outlined below has been constructed specifically for this study (Fig 1.1), for identifying and analysing debt relationships in a peasant farming community and is, therefore, only applicable to data gathered from similar sources to those used here.

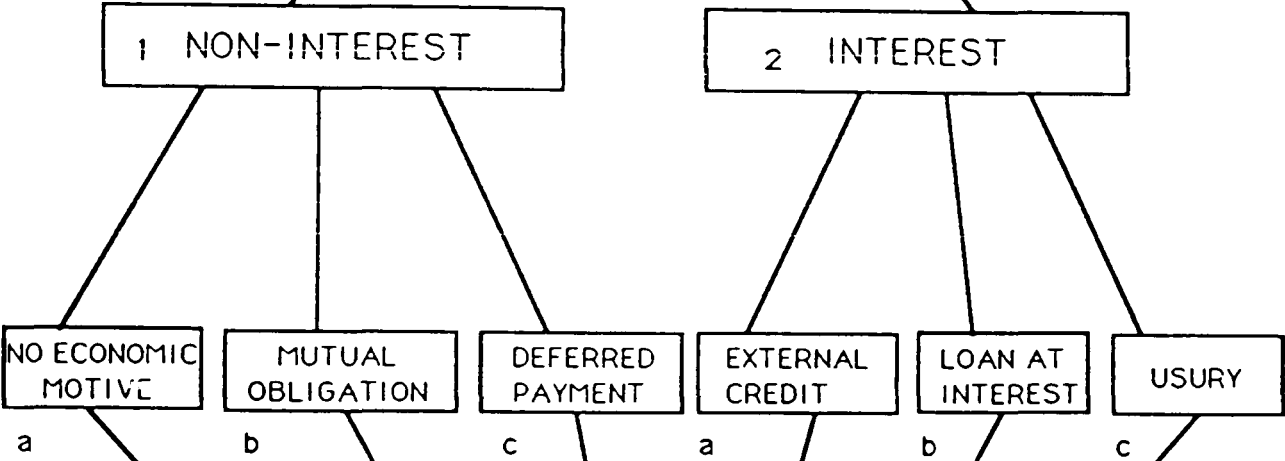
CATEGORIES OF DEBT

Debt transactions have, for the purposes of this study, been divided into 4 Categories; Internal, External, Formal and Informal. The first two relate directly to the geographical location of the debtor and creditor:

CATEGORIES



FORMS



DEBT TYPES

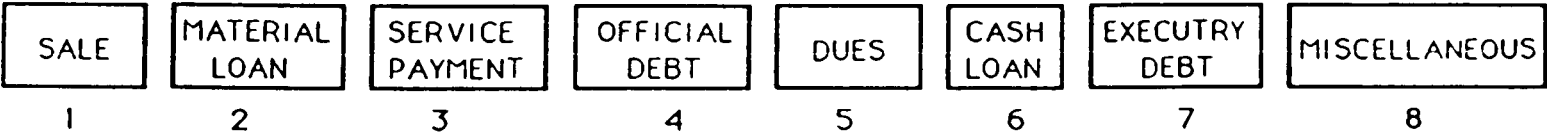


Fig 1.1 Debt Classification Model

Internal: Both parties reside within the estate group under study, in this case the 4 Grandtully estates. This Category contains two sub-sets which account for those transactions which occurred within a single estate, and those between any of the estates: these have been designated Unit and Other respectively.

External: One of the parties lives outwith the estate group.

The second pair of Categories relates to the social/professional status of the parties:

Formal: One or both parties is not a member of the peasantry but is a member of the landowning or merchant class, is a government official, estate factor, professional money-lender or minister of the church.

Informal: Both parties (at the time of transaction) are members of the peasantry; tenants, sub-tenants, cottars, craftsmen, labourers and spouses thereof, or are employees of those in the Formal bracket.

The above Categories in no way imply the "direction" of a debt transaction, either socially or geographically. Also, the rather broad classification of profession and status has been made for the purposes of brevity and further refinement or explanation will be made where necessary in the subsequent analysis.

FORMS

Two Forms of debt transaction have been identified; they are only precisely recognisable at the most basic level - whether or not interest is demanded - and several sub-forms of each have been established:

Non-Interest Loan

a) No Economic Motive

Such debts are incurred through borrowing goods, money or even services from someone who expects no financial profit from the transaction. Loans of this sort have undoubtedly featured throughout human history usually occurring between friends, neighbours or relatives living in close proximity. Made for many reasons, charity, friendship, through disinterest, guilt or even a desire to please God, these loans have been important in personal and social relationships. The effect of such loans is not uniform; for instance, those given and received in friendship often help to form the adhesive bonds in communities and families, whilst those made through charity have alienated lender and recipient.

Whatever the motivation and whatever the loan, the transaction is rarely recorded, making their significance in the circulation and exchange of goods and money impossible to fully discern or quantify; like smuggling or today's black economy. Most are usually only important to the recipient although this Form also includes "loans" made with no expectation of repayment, those in which "some social benefits may be regarded as providing a measure of equivalence to the original

loan".⁷

b) Mutual Obligation

Debts of mutual obligation are usually communally incurred between neighbours, like the "No Economic Motive" loan these are "social" loans although the motivation here is at least indirectly economic. Most often these loans are based on an exchange of labour for undertaking certain tasks in the farming year - ploughing, harvesting, shearing, the raising of crucks etc. Such arrangements were an intrinsic feature of Scottish farming before enclosure and to some extent still are. The duration of the labour lent and borrowed was not a predominant consideration as the tasks could often not be completed by an individual. As debts they were rarely closely examined and rarely went unpaid; individuals being alternately debtor and creditor the arrangement was to the benefit of all.

c) Deferred Payment

This loan is readily understood in this age of the personal account. Its characteristic element being the provision of credit; payment is not made for the goods or

⁷ Firth, R (1964) Capital, Saving and Credit in Peasant Societies: A Viewpoint from Economic Anthropology, in Firth, R & Yamey, B S (eds) Capital, Saving & Credit in Peasant Societies, p32

service being "bought" at the time of the transaction - at "point of sale", credit is extended.

"Even in the most primitive non-monetary economic system the concept of credit exists - the lending of goods or services without immediate return against the promise of future repayment."⁸

Credit is the equivalent of an *interest-free loan*, it is a facility *internal* to the trading system which can be applied to payments in coin or kind. It is not a direct loan but is a book-credit granted by the seller to the buyer and may be secured or unsecured depending upon the credit/loan agreement.

This Form of loan is an essential facility for societies dependent on agriculture for food and the raw materials of commerce and other industries:

"In a world where seasons are uncertain and six months intervene between sowing and harvest, the need of advances was not the invention of man; it was inherent to the nature of things."⁹

Certainly, in any but the most unsophisticated or "immediate exchange" systems "overtrading"¹⁰ has long been accepted as an indispensable tool of traders and merchants.¹¹ Only the crudest of exchange systems can

⁸ *ibid.*, p29

⁹ Tawney, R H (1925) In his introduction to Thomas Wilson's *Discourse on Usury*, p19

¹⁰ Defoe, D (1732) *The Complete English Tradesman* Vol 1, p46. During the sixteenth- and seventeenth-centuries the term 'overtrading' was commonly used to mean 'the extension of credit'.

¹¹ Braudel, F (1982) *The Wheels of Commerce*, p384

survive without the essential lubricant of credit; without it economies would grind to a halt,¹² with it trade can function and expand. The principle of Tawney's comment on the woollen industry of the 16th century applies to almost all multi-stage industries both past and present:

"At every point...from the breeding of sheep to the sale of cloth, credit intervened to bridge the gaps between successive stages."¹³

This dependency on deferred payment or credit did not just apply to the lairds and merchants but was essential to the entire social hierarchy (2.2.2). Casual credit was most common amongst the small masters and peasants of whom it was said "Borrow they must: they will lend - for a consideration - if they can".¹⁴ The inclusion of a "consideration" in any loan transaction places an incurred debt into the second identified Form.

Loan with Interest

This Form of loan can be an extension of the basic credit arrangement, as with the credit card of today, or it can stand alone with no intrinsic credit period. All of the sub-Forms could be secured or guaranteed.

¹² ¹²ibid, p385

¹³ Tawney, R H (1925) op cit, p46

¹⁴ Wilson, Thomas (1572) Discourse upon Usury, p21

a) External Credit

It is in this Form that the purchaser or borrower crosses the dividing line between being a "credit-user" and a "debtor"; if the outstanding payment on a purchase is not cleared by the end of the previously agreed credit period, interest will be charged. Here the term debtor becomes awkward to use as it must cover different "degrees" of indebtedness. Prior to the inclusion of an interest charge the buyer/debtor merely owes the seller the agreed value of the goods - he is using credit. However, if the buyer does not fulfil his side of the agreement within his credit period he automatically incurs a further and, until he pays in full, continually increasing debt - the facility of interest free credit is withdrawn. Now the debtor is paying a price for *external credit*.

Credit to which a return is attached is not essential to the functioning of trade. It is rather a means of charging for time and money, not for goods or services. An increment, or interest charge, acts also as an economic sanction, as an incentive to repay a credit obligation.

This form of debt may, as happens today, involve more than two parties in the network, and although practised without plastic, precisely the same sort of transaction has long been occurring throughout trading societies.

b) Lending at Interest

Debts incurred at interest could be based on money, goods or services. In each case the form of the loan was the same although the interest rates and repayment schedules could be very complex, varying immensely from place to place and from season to season. Almost all such loans were secured on land or material goods and were a recognised necessity in the market-place.

"Borrowing money upon interest may, in any accidental distress, deliver a tradesman from a present difficulty, supply an exigence, and answer the end just then before him."¹⁵

Since the Act of 1587 (legalising usury) the legislature has been greatly concerned with the setting of interest rates: after 1587 the rate was generally around 10% until 1633 when it was lowered to 8% and sixteen years later it was reduced again by another 2%. Throughout the study period the rate remained fairly stable; at 6% from 1649 and at 5% from 1713.^{15a}

c) Usury

Throughout history the term Usury has had a range of meanings (1.2), however, for the purposes of this classification it will be used only to mean the illegal practice of lending money, services or goods at interest with no prior credit period. The illegality

¹⁵ Defoe, D (1732) The Complete English Tradesman Vol I, p380

^{15a} An Introduction to Scottish Legal History (1958) Vol XX, p202, Stair Society

being either because all lending at interest was outlawed or because the rate of interest was above the legal maximum. The development and legality of usury is examined in 1.2 and 2.2.3. In the context of this study the term Usury has been rejected as the general name for money-lending because so often the term is only understood in the pejorative sense. Also usury has had a complex legal and social history which would make it necessary to qualify the term each time it was used in a different context. Finally the popular image of the usurer as a professional lender and usually rather grotesque figure in a community renders the term too emotive for comfortable use. There were no professional money-lenders identified in the Grandtully records although much lending at interest did occur.

TYPES OF DEBT

Eight debt Types have been identified. The significant characteristics of these classes are the reasons why the debt was incurred (the purpose as opposed to the motive) not the actual mechanics of the transaction:

- 1) Sale Debt: a debt incurred through a sale - either by deferred payment or by payment in advance of delivery.
- 2) Material Loan: made either for use and return, or to be used by the debtor and an equivalent item or the equivalent value to be returned.
- 3) Service Payment: payment for work done or to be done - the debt either being incurred by the

employer or by the prospective worker if the fee for agreed services is paid in advance. In this context the arrangement whereby an employer could claim the agreed fee from the employee if he did not turn up for work, is included.

- 4) Offical Debt: incurred through the non-payment of fees specified in a rental, lease or other legally-binding agreement.
- 5) Dues: the non-payment of dues; tocher¹⁶ - as lands goods or cash, payments for damage to property, or any other obligation due from one party to another.
- 6) Cash-Loan
- 7) Executry Debt: such debts were incurred by any individual, usually an executor or beneficiary, who illegally extracted and retained goods or money from a deceased person's estate.
- 8) Miscellaneous: a small proportion of debts identified in the data could not be classified into any of the above types. These included 'debts' incurred through theft and injury and damages for slander.

The majority of these Types of debt would involve some sort of penalty or interest payment if the debt was not discharged by the appointed date. The cash-loan has almost always included a parallel interest payment for the duration of the loan and subsequent defrayal.

Although the above classification is necessary for the purposes of this study it is not intended to imply that

¹⁶
Dowry payments

peasant indebtedness functioned within a rigid structure of explicitly recognised rules and mechanisms. The broad spectrum of alternative arrangements within which credit could be extended indicates not only the possible variations in the structure of transactions, but also the various points at which such variation could be conditioned by social forces.¹⁷ The incentives for seeking credit are unique to each transaction but may be broadly classed into those induced through 'need' and those through 'want'; borrowing for consumption and borrowing for investment.

The former, or Subsistence Debt, is the most elemental, it is incurred through necessity; borrowing for survival. Such debts are almost always features of the debt network of the peasant economy, most commonly being incurred to cope with seasonal shortages.

Borrowing for investment, or the Merchant Debt usually occurs further up the social hierarchy enabling trade to function and business to expand; the motives being those of profit and want as opposed to survival and need.

Those debts classified in Type 8 (Miscellaneous), which usually arose through some form of criminal activity, can

¹⁷ Firth, R op cit, p29

be seen as self-imposed social debts. Obviously there are occasions when instances of theft can be categorised within the subsistence debt; stealing for survival. However, none of the examples identified here could be placed in that bracket. They form a very small proportion of the whole, and for the purposes of this classification, have been given this separate status of 'social debt'.

In addition, however, all levels of society incur Ceremonial Debts; those which are not essential to physical survival but which financed the profoundly important social ceremonies - particularly those of marriage and mourning. Here, although there is an element of economic motive in the former and practicality in the latter, both of these social ceremonies have far wider psychological implications for which people are willing to pay. The incurrence of debt to service such expenses can not be viewed as personal whim. It may seem illogical for the impecunious to borrow for such apparently non-essential purposes but in all societies, especially those of peasants, powerful sanctions are brought to bear on those who do not conform with social tradition and expectation.¹⁸

¹⁸ *ibid.* p30 and Meyer, E (1983) From Internal to External Debts. in C Malamoud (ed) (1983) Debts and Debtors, p165

There are other, less obvious, secondary reasons for debt - stimulated by morality, diplomacy, religion or ideology¹⁹ - which are of less concern here than those already mentioned. However, where primary and secondary intertwine they do become significant. In Dodgshon's recent paper on Highland Chiefdoms and 'Redistributive Exchange'²⁰ he exemplifies this idea in the Scottish context. Whilst discussing the movements of goods in 'Exchange Flows' he noted that:

"We also need to take into account the fairly complex network of debt that existed between highland families by the sixteenth and seventeenth centuries. Individuals borrowed freely.....The willingness with which individuals lent to each other or acted as cautioner - without adequate security - suggests that operation of this debt network had functions that were diplomatic as much as financial, concerned as much with cementing social dependencies as with rates of return".²¹

Whether such diplomatic, or other secondary, relationships existed in the lower ranks of society will be considered below (7.0).

Even if only material debts are being examined there is always a moral element to the debtor-creditor relationship. Debts can be viewed as a pivot around which social units, whether individuals, family groups or

¹⁹ Malamoud, C (1983) Debts and Debtors, Introduction, ppix-xi

²⁰ Dodgshon, R A (1985) Highland Chiefdoms, 1570-1745 Study in Redistributive Exchange (Conference Paper)

²¹ *ibid*, p15. Cautioner is the Scottish legal term for a guarantor.

institutions, sometimes play the role of debtors, sometimes that of lenders. Within the relationship, whichever direction it takes, the material or financial element is readily understood and explicit. The moral element is, however, rather less obvious and can be split into two parts; trust and mutual obligation. A creditor can and will only lend if he has confidence in the borrower although this may be based on various different forms of guarantee; possessions, productive ability, an external guarantor, a simple belief in the borrower's honesty, or an inexplicit advantage such as the diplomacy mentioned above. The relationship is based on this trust.

Mutual obligation reflects the very core of a debtor-creditor relationship - although the debtor is almost always in the weaker and dependent position. The creditor exchanges his assets against services, future payment with interest, or goods of an agreed amount, and trades his 'generosity' for subordination, while the debtor combines his need to borrow with a possibility of obtaining work, buying food, paying rent, furthering an already functioning business deal or even re-lending to others for, he hopes, better returns.

Nonetheless, although mutual obligation is a feature of every loan, for the borrower "contracting a debt amounts to being dependent upon a creditor; to lend....is a

manifestation of superiority and control over the debtor's person."²² Galey argues that this bias "gives rise to, or is a sign of inequalities" which once established are seldom broken.²³ The data compiled for the Grandtully estates will be examined in relation to this argument. Amongst others, the hypotheses that loans are made in only one direction on the social ladder, from top to bottom, and that loans are always uni-directional, will be tested. Whether individuals who lent money or goods at interest became progressively more economically powerful will also be examined. Most of all, however, the significance of petty debt in the Scottish rural economy will be discussed.

First, however, there follows a general discussion of the development and role of debt and credit in Scottish society. It is intended that this provide a context for the subsequent detailed local case-study from the Grandtully Estates in Perthshire. Additionally, this discussion has an intrinsic value of its own providing as it does an overview of the uses and mechanics of debt amongst the peasantry and landowning classes of early modern rural Scotland.

²² Galey, J (1983) Creditors, Kins and Death. In C Malamoud (ed) Debts and Debtors.

²³ ^{p67}
^{ibid}, p67

1.2: Usury

Although the term Usury has been ascribed a precise meaning within the above classification it is necessary to comment on the subject in its broader sense - both semantically and historically - as the vehicle for vast numbers of debt transactions throughout history.

He is "an usurer that by contracte taketh but one penny over and above the principall in respecte of tyme, and [is a] deadly synner before god".¹

Usury, or loans at interest have been the cause of one of the longest running debates in history; between the Christian church and the secular 'economic state'.² A commandment concerning usury, or lending at interest, was propounded twenty-five centuries ago in Deuteronomy:

Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of anything that is lent upon usury. Unto a stranger thou mayest lend upon usury.³

It seems clear - it is allowable to take usury, payment for the use of money, from strangers but not from those you know. Nevertheless, attempts were still being made, by sections of the church, to outlaw usurious transactions as late as the end of the 18th century;⁴ afterall Christians were supposed to look on all men as

¹ Wilson, T (1572) A Discourse upon Usury, p353

² The debate is examined at length in Robertson, H M (1933) Aspects of the Rise of Economic Individualism.

³ Nelson, B N (1949) The idea of Usury from Tribal Brotherhood to Universal Otherhood, p16

⁴ Braudel, F (1982) The Wheels of Commerce, pp559-60

brothers.⁵

The precise origins of usury in Europe are unclear, however, it is certain that it was a well known, if vituperated practice in Ancient Greece. Aristotle had no doubts concerning the morality of lending for gain:

"Usury is detested above all and for the best of reasons. It makes profit out of money itself...Money was intended as a means of exchange, not to increase at interest".⁶

The lines for battle had then been drawn early in Europe's trading history. Whilst the church and other commentators advocated the doctrine of the just price, usury flourished and was soon endemic throughout Europe's markets.

Just as the church and economic state continued to disagree, usurers continued to prosper - economically if not socially. By the end of the 13th century there is clear evidence that all classes in European society were engaged in usurious transactions,⁷ although this had almost certainly been the case for many centuries before, wherever currency was widely used. Even where records have not survived the mass of ecclesiastical texts and secular legislation relating to usury is in itself proof of its prevalence in the Middle Ages. The legal status of

⁵ However, it is appreciated that technically the Old Testament commandment originally applied to the Jews, enabling them to take usury from Christians but not other Jews.

⁶ Aristotle, Politics, p20

⁷ Mundy, J H (1973) Europe in the High Middle Ages 1150-1309, p189

usury seems to have had little influence on its ubiquity. Wherever and whenever it was outlawed, substitute forms emerged which were merely devices for disguising usurious transactions: time bargains, fictitious partnerships, excessive security, the extraction of interest in kind or in personal labour and deliberate error all featured.⁸ Even agreements in which "the creditor put no pressure on his debtor and no breach of the law was intended", deftly side-stepped the law, as "the latter could gratify the former with a gift".⁹

Such surrogates remained in daily use until usury was legalised, but perhaps the most significant move was towards the idea of interest being recognised as a penalty for nonfulfilment of contract. The idea that if one party failed to fulfil his side of a bargain then the deceived should recupérate the price, together with interest to compensate for the loss that he had suffered, because of that sale, and the gain that he could have made with his money,¹⁰ became widely acceptable. This subtle alteration in the approved reason for the payment of an increment enabled 'respectable' business~men and bankers to charge interest with a clear conscience. Perversely, whilst the petty usurer was either outlawed or heavily taxed, the great merchant banks of Italy were

⁸ Tawney, R H (1925) Introduction to Wilson, T (1572) Discourse upon Usury, p20

⁹ Mundy, J H op cit, p184

¹⁰ ibid, p184

certainly never condemned by the business and administrative communities for charging interest although they were to some degree censured by the church.¹¹

Once the basic idea of lending at interest was legalised the legislators turned their attention to the rate of interest. Irrespective of the legal rate pertaining at any one time any interest imposed at a higher rate was then deemed to be usurious.

There were also less obvious ways in which interest could be applied to a loan. Debts incurred in kind, particularly of grain or other seasonal crop, were often repaid by a larger quantity of the borrowed commodity after harvest. However, it must be noted that in such transactions the interest was often more apparent than real - interest repayments being cancelled out by the fall in value of the crop after harvest. Such transactions were clearly of importance to the subsistence farmer but of less interest to the authorities, either secular or ecclesiastical.

There was, however, one other type of transaction which was viewed as usurious in law. Today's business~man who trades in the Futures market, buying in expectation of increased prices and higher profit could, in the Scotland of 1449, have been punished as a usurer when parliament

¹¹ *ibid.* p169

ordained that:

"...for eschewyn of derth in the lande
that freffe balzeis and officiare bath t to
lande tak inquire at ilk court at thai hald quhat
psoñis within thar bounds byis vittale & halds it
til a derth And gif sic beis fundyn that the fref t
the officiars mak it knawf at ilk m'cate cross to the
king quhat psoñis thai are. And at thai be bot as
okkirars repute and at thai be punist t demaynit
as okk'ars suld be And at the vitale at thai
haf be eschete to the king"¹²

That is, those who envisaged high profits through the purchase of victual in times of plenty to sell in times of dearth, were seen as usurers and were to be punished as such. (The development of the legal status of usury in Scotland is examined in 2.2.3)

The tirade against lending at interest had reached its height by the sixteenth century but it made little or no impact on those at whom it was aimed. By 1616 the presumably rather disheartened minister, Wolfgang Musculus, commented that "the Diuines shall reforme Vsurie when Physicians haue cured the Gout: the sinne and the disease as both incurable".¹³

Curiously, even the development and spread of capitalism had little effect on the prevalence of usury; the same forms of lending for profit existed in pre-capitalist societies where currency was utilised. Indeed, wherever trade was expanding coinage was almost always in short

¹² APS 1424-1567 (Acta Parliamentorum Jacobi II) Vol II c11, p36

¹³ Adams, Thomas (1616) The Soules of Sicknesse, p28

supply and the money-lenders profited.¹⁴ Free trade in capital may be the essence of capitalism,¹⁵ but its coming had no impact on the form of usurious transactions. It merely meant that usury no longer determined the character of interest-bearing capital - it had become subordinate to capitalist production.¹⁶ For present purposes it is these forms of usury and not their status in the overall economy which are seen to be relevant - the individual borrower or lender was rarely concerned with the influence of his transactions beyond his immediate need or want.¹⁷

What is important here is our modern understanding of usury: the popular conception of the usurer is founded in literature, of someone like Shakespeare's Shylock or Scott's 'Jinglin' Geordie' - the money-lender. We understand that a loan could be repaid in kind - in anything from a daughter's hand in marriage to a pound of flesh - but that more commonly the business was transacted in cash. However, as well as the professional and the businessman there were also small-time usurers; the peasants and artisans who lent and borrowed among themselves and who, as will be shown, built up complex networks of debt and credit relationships based not only

¹⁴ Lythe, S G E (1960) *The Economy of Scotland 1550-1625*, p103

¹⁵ Robertson, H M (1933) *Aspects of the Rise of Economic Individualism*, p111

¹⁶ Marx, K (1867) *Capital Vol III Chapter 36*, in *Pre-capitalist Relationships*. In *Pre-capitalist Socio-Economic Formations* (1979), p15

¹⁷ Usury's changing status before, during and after the transition to capitalism is examined in detail by Marx, K (1867) *Capital Vol III, chapter 36*.

on cash loans, but also on material credit transactions with an element of interest.

Here it is these which are of significance and which, although they would have been recognised as usurious in different places at different times, will be called: lending at interest, for the purposes of this study. Afterall, at different times in the past any loan which resulted in profit was considered to be usurious. The only acceptable loan being one where the lender expected nothing but repayment of the original sum after a period of time specified, "Anything else would be equivalent to selling the time during which the money was lent; and time belongs to God alone."¹⁸ Or so it was thought.

¹⁸ Braudel, F op cit, p562. This idea reflects the Aristotelian concept of "barren money".

Chapter 2: Debt, Credit and Usury in Scotland

2.1: Instruments of Exchange

2.1.1: Development of a Finance and Credit System

Debt and Credit are such familiar features of everyday life that few people today even consider their existence until their own overdraft facility is withdrawn or someone has not repaid the money lent in good faith some weeks before. Even then it is not the idea of debt or credit which is consciously considered, just the fact that we either owe or are owed money. Perhaps it is partly because of this familiarity that so few writers have examined the significance of debt in societies of the past.

A survey of Scottish social history, historical geography and even economic history texts found a remarkable paucity of indexed entries under debt, credit or related terms; the few which do appear refer almost exclusively to national debts or those of the aristocracy and politicians. At best, the majority of writers, with the exception of economic anthropologists,¹ have made a cursory nod in the direction of peasant indebtedness and moved swiftly on. Yet, as today, debt-credit relations were undoubtedly an everyday feature of Scottish life - not only in legal and governmental institutions and amongst the nobility and merchants but throughout the

¹ Particularly Raymond Firth, Thomas Weins and Charles Malamoud.

entire spectrum of society.

It appears that the vocabulary of debt in the 16th century was more widely understood and accepted than the equivalent terminology is today. In 1596 the parish minister of Kilrunny in Fife was able to expound the doctrine of the Covenant, in the form of a corporate catechism specifically 'for the use of the people',² as a metaphor using the idea and vocabulary of debt:

"...we have to strive against our awin imperfectiones, and against his enemies and ours, the devill, the world, and fleche; and be trew fathe to cleive to that perfection of his Sone,..... in whom he is weill appeasit, and of whase perfection he will accept of ours; for Chryst is the Cautiouner of the Covenant and Contract for us, as sa principall deatter, taking the sam upon him to satisfie in all whar we ar unable."³

It is surely implicit that the minister was able to assume complete comprehension of the terminology by his congregation before employing it as a vehicle to teach what was, afterall, still a fundamentally new idea. The Covenant may have been a new idea, but the notion of indebtedness certainly was not.

Early references to money transactions in Scotland are sparse. David I was the first Scottish king to issue his own autonomous coinage, but although there were no native Scottish coins until the mid-12th century there were

² Pitcairn, R (ed) (1842) *Autobiography and Diary of James Melvill*, Woodrow Soc Vol II, p362

³ *ibid* p365, also Mitchison, R (1984) *Lordship to Patronage*, p27

undoubtedly coins circulating from before that time as a wide variety of foreign coins have been discovered in Scotland which pre-date David I's reign.⁴ This is not to suggest that coinage was commonly handled by the whole population, nor that that circumstance followed quickly. "The provision of a medium of exchange was...an accepted attribute of Scottish sovereignty"⁵ by around the close of the fourteenth century, but even six and a half centuries after David I's reign some of Scotland's population were still paying or being paid in kind:

"There are several boat-wrights and weavers, the former generally maintained by their employers, and paid by the piece; the latter, make their demand in money, but are paid in meal, by an immemorial assessment on the different farms."⁶

However, although it took Scotland many centuries to develop a sophisticated money economy, the parliamentary records of 1240 indicate an early awareness, couched in financial terms, of the problems of indebtedness:

"It is to wit that this is the manner that a man may proyf his det that is to say with twa lele men and wnspect the quhilk herde and sawe the condicione maide and he sall proyf with thai men the sowme of Lii s and sa be diuerss tymes and diuerse witnes efter the quantitee of the sowme and be vthir way it may nocht be prowyt bot be his obligacione or be his grant in court befor Justice or Sheref ande proyf may noyer be addit na lessit in the nowmer of witnessing"⁷

In this way any man could, for legal purposes, prove the

⁴ Stewart, I Halley (1955) Scottish Coinage, chapter 1

⁵ Lythe, S G E (1960) The Economy of Scotland 1550-1625, p98

⁶ OSA (1793) Vol III, pp374-5 plus numerous other references to payments of this kind throughout the OSA.

⁷ APS (Parliamentary Records of Scotland) 1240-1521, p4

sum of a debt owed or owing. During the following three centuries there was a copious outpouring of legislation from parliament relating to debt, credit, usury (ockery), and the status of the cautioner; laws were enacted and repealed with remarkable frequency, leaving for us a complex network of legislation which ranged from pronouncements that:

"A man may sell or wadset his land which he has given to his son if pressed by necessity of poverty proved by 12 of his neighbours"⁸ to,

"So long as a debtor has other goods or lands his horses and oxen used for ploughing shall not be poinded"⁹ and,

"A wife finding pledges *de stando juri* without the consent of her husband, he shall not be answerable and shall chastise her".¹⁰

The above examples provide only the briefest of glimpses into what is a vast array of material. Clearly there was a high level of awareness, at least among the legislature, of the complexity and problems of indebtedness. It surely follows that this awareness reflected a recognised need experienced by the wider population. This is not to suggest that there was any sort of smooth-running and sophisticated financial economy in existence; even by the sixteenth century the currency arrangements were at best inadequate and at worst chaotic.¹¹

⁸ APS (1124-1153) Leg Burg Vol 1, p354 c107

⁹ APS (1503) Vol II, p246 c50 & (1581) Vol III, p217 c14

¹⁰ APS (1124-1153) Leg Burg Vol I, p356 c118

¹¹ Lythe, S G E op cit, p98

Perhaps the most important and confusing feature of Scotland's early economic structures was the sharp distinction which existed between the precision of accounting terms - the pounds, shillings and merks etc - and the quite remarkable imprecision of coin valuation. The former were unchanged and dependable for many centuries whilst the latter could change overnight, through legislation, as happened time after time and was "mislykit by the commone pepill".^{1 2}

From the fourteenth century onwards, Scotland's parliament not only frequently revalued Scottish specie, but frequently redefined the value of the foreign coins which were circulating freely in the country.^{1 3} An example of such legislation occurred on October 30th 1598:^{1 4}

"Considering the confusion through the multitude of foraygne gold and silver....that the unce of forayne silver of the fyneness of ellevin deneir sal haif cours heirefter within this realme for fourty aucht schillingis allanerlie, and the unce of forayne gold of twenty-twa carret finee for twenty aucht pundis, 16 schillingis, and that the particular spaces and peces of forayne gold and silver sal haif cours and pas upoun the prices following, that is to say:-

The Inglis testane weyand four denneiris and aughtene granis, at	£0	9	6
The Fyftein sou pece weyand seven denneiris and twelve granis, at	0	15	0
The Spanische ryell weyand 21 denneiris and six granis, at	2	3	4
The Croce dolour weyand 21 denneiris and ten			

¹² Moysie, D (1830) *Memoirs of the Affairs of Scotland 1577-1603*, p10

¹³ Lythe, S G E op cit. p99

¹⁴ Boase, C W (1867) *A Century of Banking in Dundee*, p6

granis, at	2	2	0
The Spanische pistolie weyand tua denneiris			
and 14 granis, at	3	2	0
The Croun of the sone weyand tua denneiris			
and 14 granis, at	3	3	4
The Harie doucat of France weyand fyve den-			
neiris tualf granis, at	6	18	0
The Gunehole angell weyand four denneiris,	5	0	0
The Doubill doucat weyand fyve denneiris,			
ten granis, at	7	0	0
The Ghentis nobill weyand six denneiris, at	7	13	4
The Portugall doucat weyand ane unce and			
four denneiris, at	35	0	0
The Angell noble weyand four denneiris, at	5	3	5
The Harie noble weyand fyve denneiris ten			
granis, at	7	0	0
And the auld Rois noble weyand six denneiris,			
at	7	15	0
And last, that his Majestei thirseell noble			
to give heirefter	7	16	0
The Hat pece,	4	9	0
The Lyoun pece,	5	0	0"

Like all small countries in that period Scotland's currency still contained large numbers of coins from the states with which she traded.¹⁵

The confusion created by the presence of foreign coinage must have been immense. The value of coins often being decided by their appearance and weight when no official valuation had been given, or was known. In addition, Scotland's own domestic currency comprising a vast array of different, often non-fixed value coins, was clearly not free from confusion. Also bullion was always in

¹⁵ Checkland, S G (1975) Scottish Banking: A History 1695-1973. p11

short supply in Scotland¹⁶ so the rulers debased, devalued and legislated¹⁷ whilst the ruled forged, smuggled and clipped;¹⁸ no doubt leading to profit for some but for the majority simply compounded the existing problems.

Reducing the proportion of precious metal in specie was obviously a tempting source of revenue in times of shortage:

"Good coins disappeared from circulation to be melted down for bullion, and those remaining tended to lose value in accordance with their depreciated metallic content."¹⁹

The resulting "poorer money tended to drive the better out of circulation, either into hoards or into goldsmiths' crucibles",²⁰ or out of the country, thereby exacerbating the problem. With specie in short supply the credit system was put under severe strain; the

¹⁶ With little or no indigenous bullion Scotland was dependent on importing gold and silver and was, consequently, at the mercy of fluctuations in international bullion price: "If demand for the precious metals consistently outstrips supply, prices will increase and cause full-bodied coins of gold and silver to become undervalued and liable to be melted down, clipped or circulated at unofficially high rates." From Challis, C E (1977) *Debasement: The Scottish Experience in the Fifteenth and Sixteenth Centuries*, in Metcalfe, D M (ed) (1977) *Coinage in Medieval Scotland*, BAR British Series Vol 45 p171.

¹⁷ Legislation did not only apply to reducing coin weight and increasing face values but also attempted to stem the flow of bullion from the country: "1563 June 4 - The Parliament decreed that nae person carry forth of this realm any gold or silver, under a penalty of escheating of the same and of all the remainder of their moveable guidis. Merchants going abroad to carry only as much as they strictly require for their travelling expenses." From Boase, C W op cit, p5.

¹⁸ A pamphlet issued in 1695 stated that it was probable that the whole silver money in the kingdom (Scotland) was £5,600,000, of which £4,000,000 was clipped, and the rest unclipped, but hoarded. From McLeod, H D (1855) *The Theory and Practice of Banking, with the elementary principles of currency, prices, credit and exchange*, Vol I, p61

¹⁹ Hamilton, H (1963) *An Economic History of Scotland in the Eighteenth Century*, p291

²⁰ Lythe, S G E op cit, p101

relationship was succinctly summarised by an anonymous writer in 1705:

"As the Wealth and Greatness of a Kingdom is supported by Trade, so Trade is carried on by Credit, and when this Spring of Trade decayes the Symptoms of Ruin soon appear: but when there is not Money to answer in a great measure of Credit, then the same will be of no use. Trust will not be given where there is not a certainty of quick payment."²¹

Without faith in the supporting currency credit facilities would be withdrawn. Such crises occurred frequently throughout Scotland's history; although rarely induced by currency shortages, the insufficiency of bullion always aggravated any crisis. As long as Scotland could not increase or even replace her bullion supplies, if confidence in currency declined - whether because of debasement, famine or war - a liquidity crisis followed.

When, for example, harvests had failed, grain had to be bought in from England, Ireland or the Baltic, and payment was demanded in coin. In turn the importers required retailers to pay in specie and so it went on down the trading hierarchy - the vicious circle was complete:

"at precisely that moment when greater quantities of precious metals were necessary, they were in fact diminishing by export."²²

At the lower end of that hierarchy the reactions to

²¹ Anon (1705) *The Occasion of Scotland's Decay in Trade*, p7

²² Smout, T C (1963) *Scottish Trade on the Eve of Union 1660-1707*, p125

shortages of specie were different from those at the top. There are numerous records of the forgery and clipping of coins. In 1597 the Burgh records of Lanark relate the punishment for merely receiving and using "adulterat money":

"and for thair (the accused) punishment....ye sall caus tak thame tua sindre mercat dayis and put paperis on thair heidis and latt thame stand at the mercatt croce the haill mercat tyme, and thairefter leid thame throw the toun; guhairthrow utheris may be terrifyit to attempt the lyk."^{2 3}

The punishment of the receiver was vastly preferable, however, to that of the forger for whom the death penalty could apply, although more usually transportation was the judgement.

The clipping of coins was a common occurrence for which punishment could also be severe. Presumably as a deterrent Henry I of England, on finding 94 of his 97 moneyers guilty of clipping and debasement, "had 94 hands chopped off and nailed to the ex-owners' office doors."^{2 4}

Possibly the most prevalent of crimes relating to coinage was the "transporting and home-bringing of false coin".^{2 5} In the Bloody Roll for the Burgh of Perth which listed the crimes, committed between 1556 and 1580, which were punishable by death, fourteen of nearly sixty indictments

²³ Scot Burgh Recs Soc (1893) Extracts from the Records and Charters of the Burgh of Lanark 1150-1722, p112

²⁴ Bishop, M (1971) Pelican Book of the Middle Ages, p234

²⁵ Cowan, S (1904) Ancient Capital of Scotland Vol II, pp13-4

were for importing false coin. A typical example being:

"Henry Adie alias Adamson, burgess of Perth - for the treasonable inbringing within this Realm furth of Flanders, Bordeaux, and other foreign countries, of false and adulterated money, viz., hardeittis, placks, babeis, nonsuntis xxxs, xxs pieces, and other spurious money...and the treasonable outputting thereof among the King's lieges as lawful money and good coin."²⁶

Clearly the possibilities for fraud were immense. The system could be corroded at all levels and was too weakly supported to repel attack from both within and without the country. "Scotland's pecuniary currency brought confusion to the guileless and profit to the guileful"²⁷

The origins and early development of Scotland's financial system are largely obscure. Apart from occasional transactions made by the monarch or government, few records of financial as opposed to accounting exchange have survived; some of the earliest references are monastic, relating the placing of money, by institutions such as Coldingham Priory,²⁸ with Italian bankers, whilst Bagimond's Roll provides one of the earliest indications of the use of bills of exchange (2.1.2) during the collection of papal taxes in Scotland.²⁹ Coldingham also features in another financial and political agreement made between James I and John Hardyng, chronicler and English spy. The contract is for Hardyng's safe-conduct

²⁶ *ibid.* p14

²⁷ Lythe, S G E op cit. p101

²⁸ Checkland, S G op cit. p725

²⁹ Dunlop, A (ed) (1939) 'Bagimond's Roll: Statement of the tenth of the kingdom of Scotland' Miscellany of the SHS Vol 6, SHS 3rd Ser. Vol 33, p27

and for unspecified 'thynges' which he is to deliver. Of interest is the promise that he will be paid in English Nobles:

"James by the Grace of God Kynge of Scotland to John Hardyng Squier of the Lord Umfrenile sendes gretynge Note ye that we have sende thise our Ires of seur and sauf conduite saufely thar to abide fourty days with his gudes and horses and seurely to return with out disturblence or impediment by any Scot, bryngand with you the thynges whiche we spake to you of at Coldyngingham for which we bynde us bi thise Ires to pay you a thousand markes of Inglisshe Nobles without delay default....."³⁰

In common with many other institutions, the embryo of the Scottish financial system developed within the context of the church. Needing a site for the "redemption of transactions",³¹ churches, often the altars, were chosen as places where merchant and trader, debtor and creditor could meet. One such arrangement was described by Scott in his *Fortunes of Nigel*. An estate was to be released from forfeiture,

"...by payment of the stipulated sum for which it stood pledged, and that at the term of Lambas, and at the hour of noon, and beside the tomb of the Regent Earl of Murray, in the High Kirk of St. Giles, at Edinburgh, being the day and place assigned for such redemption."³²

This system eventually spilled over into the surrounding areas. In Edinburgh,

"The merchants concentrated at the Cross in the High Street, conducting their credit and other transactions. The goldsmiths, with their booths around St. Giles nearby, made loans and dealt in foreign exchange".³³

³⁰ Bodleian Library MS Tanner 94 f132

³¹ Lees, J Cameron (1889) *St Giles, Edinburgh Church, College and Cathedral*, p125

³² Scott, W (1831) *The Fortunes of Nigel*, Dryburgh Edition, p128

³³ Checkland, S G op cit, p6

Few records have survived which concern the pecuniary dealings of these proto-bankers. Usury was illegal in Scotland until 1587 (2.2.3: Usury in Scotland) so although there are numerous records of financial transactions in notaries' protocol books - with the names of both the depositors and the witnesses - there is no ^{easily available} evidence concerning early interest rates. However, that credit was already an integral component of the finance system is indisputable but the various means by which it was extended and incurred at each level in society must be identified.

2.1.2: Bonds, Bills of Exchange and Promissory Notes

"Credit is the exchange of two promises separated in time".¹ To enable credit transactions, other than those of extremely short duration, instruments of credit are necessary. Such written documents have been used for at least twenty-two centuries although it was not until the thirteenth-century AD that they came to be commonly utilised in the West.²

Bills of Exchange, Bonds, Promissory Notes, letters of credit, bank-notes and cheques all constitute instruments of credit. At the most fundamental level such fiduciary money existed in order to facilitate the transfer of specie (or equivalent money form) over time and distance. In times when transport facilities were bad and travel unsafe the problems posed in physically paying for goods could be severe, and expensive: in 1585 a courier in France was paid 10 francs for carrying only 720 francs over a distance of less than 20 miles - one horse could not carry both the money and the rider.³

The instrument of credit was a means of economising on the transfer of money and, at first, was simply used between markets. However, by the simple expedient of endorsing, bills of exchange could be circulated, thus

¹ Braudel, F (1981) *The Structures of Everyday Life*, p470

² *ibid*, p472

³ Robertson, H M (1933) *Aspects of the Rise of Economic Individualism*, p48

enabling credit to be prolonged and the volume of trade to increase.

The complexities which could and did ensue were immense. Even without fictitious bills and the common practice of individuals drawing on their own credit, the phenomenon of drawing and redrawing upon bills often became incredibly entangled. Adam Smith wrote at length about transactions involving bills of exchange; one of his simpler examples illustrates the problems:

"The trader A in Edinburgh, we shall suppose, draws a bill upon B in London, payable two months after date. In reality B in London owes nothing to A in Edinburgh; but he agrees to accept of A's bill, upon condition that before the term of payment he shall redraw upon A in Edinburgh for the same sum, together with interest and a commission, another bill, payable likewise two months after date.....This practice has sometimes gone on....for several years together, the bill always returning upon A in Edinburgh."⁴

This was known as raising money by circulation. It is not surprising that for many people the instrument of credit was an alien and incomprehensible thing. Even David Hume resolutely opposed "this new invention of paper bank-bills and chequer notes".⁵ Whilst in 1696 the directors of the Bank of Scotland had designated bills of exchange as "very troublesome, unsafe and improper".⁶ Even as late as 1732 Defoe, so familiar with the more sophisticated English economy, could still write of, "passing and repassing promissory notes, or bills

⁴ Smith, A (1776) *The Wealth of Nations* Vol II, p408

⁵ Hume, D (1752) *On the Balance of Trade*, p171

⁶ Hamilton, H (1963) *An Economic History of Scotland in the Eighteenth Century*, p295

endorsed by one another reciprocally, and drawn upon themselves..."⁷

as an unhappy practice, infallibly ruinous and destructive.

Irrespective of the confusion which often arose in the use of instruments of credit, the basic definition of each type of document was straightforward. In this context only three sorts of instrument are relevant; the Bond, Bill of Exchange and Promissory Note.

Bonds

"Bond is the name used to describe the deed (or clause or clauses in a deed) by which an obligation is undertaken. This obligation may be of any kind, as to pay, or to do, or to abstain from doing."⁸

A bond must always contain an obliger and an obligee and a sum of money engaged to be paid, or an act or service to be performed. The most frequently recorded bonds concerned financial obligations and had a standard, recognised form (Appendix 1). This form did, however, change with the type and detail of any one agreement and several types of bond were commonly employed to arrange different sorts of financial loans: ordinary personal bonds, bonds of caution, bonds of relief, bonds of provision and bonds of annuity. Such contracts were commonplace amongst the landowning classes (2.2.1). For instance, the Minutes of the Court of Directors of the

⁷ Defoe, D (1732) *The Complete English Tradesman* Vol I, p380

⁸ Wark, J L (1929) *Encyclopaedia of the Laws of Scotland* Vol 2, p300

Royal Bank of Scotland recorded in 1752 that George Lockhart of Carnwath esq. was proposing to borrow three thousand five hundred pounds sterling on land and personal security. The bank "Agreed to lend the above sum of three thousand five hundred pounds on personal Bonds, in regard Mr. Lockhart has been Serviceable to the Bank by bringing to the Office, the Specie he receive in payment of the Rents of his Estate from time to time..."⁹ Although the second largest loan made by the bank that year, the basic form of the agreement was standard - personal bonds being acceptable to both lender and borrower.

Non-monetary bonds were not unusual. Basically, they formed a contractual agreement. In sixteenth-century Scotland, when available manpower was more important to the lairds than the total of their rentals, bonds of manrent were commonplace; one individual would oblige himself to come to the defence of another. In 1603 Archibald, the seventh Earl of Argyll, entered into a bond of manrent,

"to his well-beloved cousin Sir Thomas Steuart [of Grandtully], whereby the Earl bound himself to defend him, and to come to Grandtully with his forces, when necessary, for that purpose."¹⁰

Sir Thomas also became party to some rather unusual

⁹ Lockhart, S F Macdonald (1984) 'To My Pocket': A personal Cash Book of an 18th Century Scottish Laird, p6

¹⁰ Fraser, W (1868) The Red Book of Grandtully Vol I, plxxix. The bond is transcribed in that volume on p106, no 55.



bonds. The following case is not only illustrative of the broad spectrum of possibilities to which a bond agreement might be put, it also provides an interesting insight into the drinking habits of the upper classes.

On May 3rd 1647 a bond was agreed at Murthly in which,

"Colonel Innes [an officer in the army of the Committee of Estates] bound himself, if Sir Thomas from that date to May 1648, did not drink more than a quart of ale every day, with a moderate quantity of aqua vitae for his health, to give him the best beaver hat and band of gold in Edinburgh. Sir Thomas, if he failed in this, bound himself to give the Colonel two such hats and bands, whilst the Colonel was to drink not more than a quart of ale in a day, nor any other strong drink, two days being reserved, either at the christening of or marriage of any of his own children".¹¹

Bills of Exchange

"A bill is an unconditional order in writing addressed by one person (drawer) to another (drawee, who after signing the bill becomes the acceptor) signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer."¹²

A bill of exchange had three principal characteristics; it contained an obligation to pay money, it was a negotiable instrument of exchange, and it operated "as an assignation of funds held by the drawee, when it is intimated to the drawee."¹³ In other words, when the holder of the bill presents it to the drawee he, the drawee, is obliged to pay the holder. If the drawee does not have sufficient funds he is obliged to pay the holder

¹¹ *ibid.* pxciv

¹² Wark, J L (1929) *Encyclopaedia of the Laws of Scotland* Vol 2. p91

¹³ Marshall, E A (1983) *Sale of Goods, Consumer Credit and Bills of Exchange, Cheques and Promissory Notes*, p349

as much as he possesses.

Bills of exchange were fundamentally important to the Scottish economy during the seventeenth and eighteenth centuries. With an economy dependant upon the black cattle trade, a means of facilitating long term credit was essential. Bills proved to be the answer and would often be passed from hand to hand over many years without ever being paid. The entire cattle trading system relied on credit and the bills of exchange, signed by drovers, were a part of the currency in the Highlands of the eighteenth century. Haldane notes, however, that bills of exchange were not exclusive to the cattle trade but also facilitated trade in domestic products such as Easdale slate, Morayshire grain and Findhorn salmon,¹⁴ as well as "coffee beans from Rotterdam, wines from Bordeaux and olives of the Mediterranean shore".¹⁵

Bills of exchange were certainly well known to any person who traded at anything but the most basic level, forming as they did, an important component of the circulating medium of the country:

"by the means of which, manufacturers and merchant turn credit into a negotiable shape, and are enabled to proceed with their dealings as if paid in cash for their goods, while the buyer is indulged with a delay of payment till the returns of trade fill his hands".¹⁶

¹⁴ Haldane, A R B (1952) *The Drove Roads of Scotland*, p48

¹⁵ *ibid.*, p48

¹⁶ Bell, G J (1860) *Principles of the Law of Scotland*, p109 section 305

Promissory Notes

"A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed time or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer."¹⁷

Reputedly having their origins in the Notes used by the goldsmiths of Lombard Street, promissory notes are in their essentials bills of exchange. They were, however, rather more limited than bills; notes could not be passed between individuals by endorsement nor could they bear interest until the reign of George III.¹⁸ Fundamentally the only characteristic which differentiated a promissory note from an IOU was that they contained an unconditional promise from the debtor, to pay his creditor. Unlike the bill, a promissory note could not become part of the circulating medium of exchange.

As is shown below, all of these instruments were employed as a means of extending credit on the Grandtully Estates. The following section addresses the extent of their use and that of other credit-facilitating mechanisms in both the landowning and peasant classes.

¹⁷ Wark, J L op cit, p554

¹⁸ *ibid.*, p554

2.2: Indebtedness in Society

2.2.1: The Landowning Classes

The matrix in which the Instruments of Exchange functioned was of course formed by interaction between people. Amongst the landed classes the need to raise finance was an integral part of the business of running estates. Funds were also required to support the increasingly comfortable and materialistic lifestyle to which the gentry and aristocracy were becoming accustomed - a trend which found little favour with the peasantry:

"When he [the laird] returns to his own country
[from Southern or French court life] though,
thousands [of pounds] have already been sent
away
a cattle levy is imposed on the tenantry, and so
the marts are exported, after being cured and sold
at the market.
Thus do the debts increase, to be demanded from
his son after him."¹

Money was raised either from within the estate system - the profits made from sales and tenants rents - with loans being made between landowners, or by being borrowed from outwith the landed society.

Contracts of loan were often drawn in the form of bonds. Those in which land was pledged as security were the most common and were known as heritable bonds.² Such credit transactions were almost totally confined to the nobility

¹ Translation from 'A Song to MacLeod of Dunvegan', in Matheson, W (1970) *The Blind Harper*, Gaelic Text Soc., p71

² Checkland, S G (1975) *Scottish Banking: A History 1695-1973*, p7

and references to indebtedness between landowners are certainly legion; some landed families succeeded or failed according to their money-lending skills; the 1st Earl of Dundonald, William Cochrane, "was making advances to impecunious noblemen" during the 1640's and 50's.³ Lending seems to have become a family tradition for the Cochranes and by 1726 John, Earl of Dundonald was owed, at least, £55,164 13s 4d Scots, by other members of the nobility, identified in debts dating from 1678.⁴ Reflecting that the total hard currency in Scotland was believed, by contemporaries, to be around £9,600,000 Scots when funds were being raised for the ill-fated Darien scheme,⁵ Dundonald's credit holding, and he was by no means alone, is indeed remarkable. The significance of such credit holdings lying not in the fact of their existence, nor in their size, but in the need for such a facility.

The ability and possibility to borrow was essential to the majority of lairds and their immediate subordinates; tacksmen, factors, etc. In John Grant Michie's "Records of Invercauld" he noted that:

"...all estates accumulated debts, sometimes so heavy as to tie up the whole rental. Thus, at mid-century, on a sample of nine estates, on all except one, the value of the estate, at twenty years purchase, was less than the

³ ibid. p7

⁴ From "An Inventory of Debts due to the deceast John Earle of Dundonald", SRO GD233/108/1/1.

⁵ Lenman, B (1977) An Economic History of Modern Scotland, p50

total creditors claims."⁶

This is not to suggest that these estates were being badly managed; landowners, factors and tacksmen had to deal with sometimes large and complicated financial transactions in order to enable estate improvement, initiate and fund building programmes or smooth the cash-flow between one harvest and the next.

The enormous number of tradesmen's bills, letters asking for loans or repayments, and records of bonds or outstanding interest payments, which exist in surviving estate and personal records, give some impression of the vast credit network which functioned among the landed classes. A typical example of the sort of plea sent to Sir Thomas Steuart of Grandtully came from David Haliburton of Pitcur, himself a local heritor. Written to John Steuart, Sir Thomas's son, on May 13th 1681 it read,

"I have sent this bearer to know how your father is in his health, since the trimbling laift him, as also intreat the favour of you as to speak to him, and se if he will let me hav sixteen hundredth pounds Scots for to pay an creditor of mein who is prassing for the mony at the teerm"⁷

Such letters occur frequently in the Grandtully records. Sir Thomas had long been a substantial creditor in the area. A list of the outstanding bonds and annual rent owed to him in 1673 totals £13,141.14.10 (Appendix 2). Although not specified, the document seems to record

⁶ Michie, J Grant (1901) *The Records of Invercauld*, pp429-30

⁷ Fraser, W (1868) *The Red Book of Grandtully Vol II*, p255

those outstanding debts for which the payment of the principal itself was overdue.

The list consists of 54 separate loans, for 6 no location is given for the debtor, but of the remainder 30 had been made to individuals living outwith his own estates. Of those made within the estate system all were made to people 'in', as opposed to 'of', a place suggesting that they were members of the tenant classes. In fact, of these 18 entries, 10 of the debtors have been identified as tenants on the Grandtully Estates. Of the remaining 30 located debts, the wording of 19 suggests that the debtors were: professional men, like Charles Stewart then Commissary of Dunkeld; members of the aristocracy, identified by their title; or were landowners, as suggested by the use of the term 'of' a particular place. The only exception to these, which was placed in this category, was a loan of 1000 merks made to "the toun of Perth" in 1668. Only 7 of the 30 external debts suggest that the debtor was of the tenant classes and in all cases came from within 4 miles of Murthly Castle, the main residence of the Steuarts of Grandtully at that time.

The pattern suggested by this example is not unexpected. A laird would obviously be more likely to lend to his own tenants over whom he had substantial control and legal jurisdiction (5.2.2). Those loans made to tenants or artisans from elsewhere seem to have been limited to

individuals who lived near Sir Thomas's administrative centre. This would have enabled his factor or birlaymen to have kept tight control over repayment with little expenditure of time. It is also possible, although not tested here, that these debtors had previously been tenants on the Grandtully Estates. Despite the fact that just over one third of the debts recorded in this list were owed by people who were almost certainly members of the tenantry or were craftsmen, the total of these came to only 15% of the entire outstanding amount. With the largest of these loans totalling only £253.6.8, the laird could not afford time and money chasing small unpaid sums from people outwith his control and immediate area.

The other interesting feature of this document is its confirmation that even when payment of the principal of a loan was overdue, instalments of annual rent were largely paid up-to-date. Only 15 of the debts recorded show any outstanding annual rent component and none of these was for greater than 1 year. This was a widespread and accepted practice: on December 2nd 1681 John 1st Earl of Breadalbane sent a bearer to Sir Thomas Steuart of Grandtully carrying the annual rent on a loan "with many thanks for your continuance of the principall"⁸ Nonetheless, although this was normal practice there were occasions when the creditor has to take action to ensure

⁸ Fraser, W (1868) The Red Book of Grandtully Vol II, p256

the return of his principal. Thirty of the items listed do contain an element of expenses⁹ which suggests that Sir Thomas had already taken legal action to recover the principal despite the continued payment of interest. In almost all cases on which action had been taken, the defrayal of the entire debt was six or seven years overdue and in one case as much as eighteen years late.

Although a fascinating list, it must be borne in mind that it seems to record only those bonds and annual rent payments which were overdue thus comprising only a fraction of Sir Thomas's total credit holding. Nevertheless, there is no reason to suppose that the proportions of the different types of creditor and their locations are in any way skewed from the norm.

Sir Thomas Steuart of Grandtully was undoubtedly an important source of credit in central Perthshire, lending to the Earl of Breadalbane and even to the Countess of Atholl. Both of these borrowers came from families with far greater land holdings than the Steuarts of Grandtully, yet Sir Thomas lent £10,000 to John Campbell in 1677 before he became Earl of Caithness and Earl of Breadalbane.¹⁰ To the Countess of Atholl he could lend English money when "there was none to be had in Edinburgh"¹¹ These examples are few among many - if there

⁹ Expenses; the Scottish term for the costs of a legal action

¹⁰ Fraser, W op cit, Vol II pcxviii, pp 237,238,240,253,256,278,279 & 288

¹¹ *ibid*, pcxviii & p236

were professional money-lenders on the Grandtully Estates the laird himself came very close to being one of their number.

For those who could not, or did not wish to, borrow from their peers, but could provide security or guarantors, it was certainly possible to borrow in cash. The following advertisement appeared in The Scots Courant in October 1710:

"Any who need the Loan of Fourty Thousand Merks less or more, upon sufficient security, may call at Mr Robert Hepburn Writer to the Signet, his Chamber on the South side of the street a little from the Cross and his will discourse with them about the same"¹²

Such offers of cash loans appeared not infrequently in the newspapers of the 18th century, but for the many lairds who had no history of credit-worthiness on which to raise such loans and were without the backing of other men of substance, their only option was to 'wadset' their lands. For many this was often the last resort.

Wadsetting was "a species of mortgage whereby lands were allocated as security in exchange for a lump sum and a low annual payment".¹³ It was a legal arrangement whereby the owner was bound to surrender his property if he failed to meet the terms of the agreement by the specified date. This form of usufructuary mortgage was extremely common, although often only came to light on

¹² The Scots Courant, Monday October 3rd to Wednesday October 25th 1710 no. 799

¹³ Lenman, B op cit, p32

the demise of the debtor, as happened, for example, in the 1570's when it was discovered that "Lord Forbes's debts on wadset land amounted to 14,000 merks".¹⁴

In wadsetting agreements the creditor was in an extremely powerful position, he gained all the advantages of landowning without any of the responsibility. In certain cases it was, in fact, in the interests of the creditor to prolong a wadset rather than ultimately acquire the land outright; this is particularly true in cases of tenants borrowing against their holding - then, the creditor would not attain ownership, but only tenancy, instead of the 'fruits' of the land plus additional interest payments.

In Scotland most wadset lands belonged to members of the upper classes but it was one of the few ways in which landownership could move down the social hierarchy:

"The redemption of such lands necessarily involved repayment of the lump sum, which is why it was relatively easy, in exchange for further payment, to persuade impecunious landlords in the Highlands to turn wadsets into feus."¹⁵

Nevertheless, McFaulds' study of Forfarshire Estates between 1660 and 1690¹⁶ suggests that during the 1670s the aristocracy and gentry accounted for 63% of those involved in the wadset transactions recorded in the

¹⁴ Sanderson, M B (1982) Scottish Rural Society in the 16th Century, p24. From Lord Forbes Collection SRO GD52.

¹⁵ Lenman, B (1977) op cit, p32

¹⁶ McFaulds, J (1980) Forfarshire Landowners and Their Estates 1660-1690, p357

Register of Sasines for that period. The remainder comprised:

Tenantry	8%
Clergy	6%
Craftsmen	5%
Mercantile	4%
Other Urban dwellers	3%
Doctors	1%
Lawyers	1%
Portioners	1%

(9% could not be attributed)

McFaulds observes that the role of tenants as creditors increased in importance in the last two decades of the seventeenth century because of their "approachability, ubiquity and dependence",¹⁷ but that their involvement in registered financial transactions was never more than 16%. Although indicative of their status in the credit market this figure is limited by the fact that it was drawn from a single, centralised source which dealt with recording transfers of heritable property only. It takes no account of the role of the tenantry in other credit markets. The Register of Sasines merely confirms that the credit facilities offered within the land market were used and offered overwhelmingly by the existing landowning groups.

The evidence for lending and hence, indebtedness, within the landowning classes is overwhelming, but what of the majority of the population? It is clear, even from the

¹⁷ *ibid.* p398

brief examples above, that the economies of different social groups did interlink, but it has long been believed that insuperable barriers to fluid economic interaction were an integral part of the system. In 1963 Smout commented that:

"In times of prosperity, the internal trade of Scotland was run largely on inland bills between the wealthy, and on long credit with cash settlement among the poor.", but that "The fundamental weakness of the system lay in the fact that no one at the lower social levels would accept any payments except coin, or kind."¹⁸

If the majority of the population would not accept other forms of money such as bonds, inland bills of exchange or the notes issued by the Bank of Scotland from 1695, the economy had to function on coin, kind or forms of credit which were acceptable to all parties in a transaction. Given the overwhelming problems posed by both the shortage of coinage and the system itself, it is hardly surprising that kind and credit featured so persistently in 16th, 17th and 18th-century Scotland. Nevertheless, to suggest that bonds and bills of exchange were confined to the landowning classes would certainly be an oversimplification.

¹⁸ Smout, T C (1963) Scottish Trade on the Eve of ^{the} Union 1660-1707. p124

2.2.2: Peasant Indebtedness

"He hes brocht his pleugh to a foot spaid".¹ So said Ferguson's proverb of the debtor in 1641, (in total he collected 15 proverbs which related to "Waisters and Debtors", Appendix 4). Certainly, there is a substantial corpus of evidence to suggest that indebtedness had a high profile throughout the community in late medieval and early modern Scotland. The vast quantity of legislation relating to debt and credit has already been mentioned. Even early acts of law were already attempting to find a balance between the rights and claims of the creditor and the likely distress of the debtor; one example, from 1469 indicates the sort of balance they endeavoured to achieve:

"A creditor may, under a brieve of distress, distrain the goods of his debtor's tenants to the extent of the terms of rent, but no more, if [the] debt [is] for more the debtor's other goods shall be distrained, if [these are] not sufficient his lands shall be sold, but shall be redeemable within 7 years, if a purchaser is not found the lands are to be appraised by 13 neutral persons and assigned to the creditor."²

Many such clauses exist, but although indicative of the early awareness of a need to keep control over debt and credit, it does not in itself relate directly to the behaviour of the commonality. Further pertinent evidence can be gleaned from commentators of the day; Howard, for example, noted that on visiting Scottish prisons he found

¹ Ferguson, D (1641) Scottish Proverbs; collected in the latter half of the 16th century, p58

² APS (1475) Vol II c10, p112

"more debtors than criminals"³ - a noteworthy distinction in itself (2.2.4).

However, it is from primary documentary material that the unarguable evidence for an extensive peasant credit system can be extracted. The processes of small claims made in the Commissary Court and the testaments lodged with that court "contain data which bring us closer to the life of the ordinary working farmer",⁴ than do the estate records which have more usually been examined and which have tended to enforce judgement from the perspective of the landowner.

As will be shown, through the use of these sources, there was certainly an active credit system functioning amongst the tenant classes in rural Scotland during the seventeenth and eighteenth centuries. Whether this was "nothing but a strictly temporary and fortuitous adjustment of liquidity"⁵ - an expedient introduced under the stress of necessity, or whether credit facilities were used to increase and accumulate capital - there was the *will* to lend,⁶ forms the most fundamental question which can be posed about the system.

³ Turner, S Horsfall (1908) *History of Local Taxation in Scotland*, p226

⁴ Whyte, I D & K A (1984) *Debit and Credit, Poverty and Prosperity in a Seventeenth-Century Scottish Rural Community*, p23

⁵ Holderness, B A (1976) *Credit in English Rural Society before the Nineteenth Century*, with special reference to the period 1650-1720, p97

⁶ *ibid*, p108

Previously it has often been assumed that the former was the case: that in peasant communities credit was essential to the agricultural economies because of their exposure to the,

"recurrent hazards of the calendar, many seasonal disasters and long waiting-periods: one had to plough before one could sow, sow before one could reap, and so it went on, interminably."⁷

Again, examples of this type of credit market are legion: commenting on the plight of the French peasantry during economic crises, Braudel noted that usurers, took advantage of the situation and, "made the peasant sign IOU's...charged high interest and seized goods left as security."⁸ Further, he noted that in 1682, a year of crisis in Alsace, the peasants were forced, "to sign agreements of up to 30% interest; some lenders even insisted that their land should stand security, with as interest half of the crop yield....which comes in a year to as much as the principal of the loan"⁹ ie the interest rate was 100%.

Similarly, Ladurie relates the cynical techniques of money-lenders in Languedoc. Following, in particular the rise of one man from tenant farmer to landowner and merchant, he draws a vivid picture of a pioneer capitalist in the sixteenth century, lending for gain and taking advantage of the seasonal crises and shortages of

⁷ Braudel, F (1982) *The Wheels of Commerce*, p562

⁸ *ibid.*, p258

⁹ *ibid.*, p258

the farming year.¹⁰

For the professional full-time money-lender there was always scope to accumulate, but did the peasantry commonly make use of credit facilities to improve their lot? There is some evidence from outwith Scotland to suggest that they did. Braudel's comments concerning the *bracciali* of Naples note that there is clear evidence that as well as being day labourers they were "both borrowers and lenders of money, small-time usurers and careful herdsmen".¹¹ From this description it is not clear whether the lending was confined to periods of stress when debtors borrowed through need, or whether it occurred because of a will to lend and because people wanted to borrow, although Braudel seems to suggest that the latter was the case.

A study of seventeenth- and eighteenth-century yeomen in the Lake District also suggests that there was a will to lend, at least amongst the more affluent of the yeomanry. Marshall reported that,

"A richer peasant would...lease land quite extensively to smaller men...Generally speaking the local yeoman was in the habit of lending small sums of money to his neighbours and relatives...Even the man of relatively humble circumstances i.e. the man without any tenement or estate at all, might endeavour to improve his lot through

¹⁰ Ladurie, E Le Roy (1976) *The Peasants of Languedoc*, pp125-129

¹¹ Braudel, F op cit, p256. Unfortunately Braudel gave no details of the evidence and did not provide any reference.

a little speculation."¹²

Whilst, Elaine Clark's detailed study of debt litigation in fifteenth-century Essex also concludes that even then peasant trade was credit based, functioning as a means to keep cash in reserve for use in times of shortage.¹³

These and other studies certainly substantiate Braudel's observation that there was widespread "astute money-lending and commerce"¹⁴ amongst a wide-range of the peasant community throughout Europe. Work by Holderness on the English rural credit system further strengthens this view and questions the long held belief propounded by Tawney in particular, that rural credit was largely "an accidental aspect of the peasant's existence".¹⁵

But, what was the situation in Scotland? That the primary function of credit in Scottish rural communities was to ward off problems in time of dearth is undisputed. However, whether the credit system in Scotland had reached a degree of sophistication such that seasonal character of credit had become "overlaid by more permanent features"¹⁶ must be considered. Even identifying these two theoretical layers of economic activity is

¹² Marshall, J D (1973) *The Domestic Economy of the Lakeland Yeoman, 1660-1749*, Trans of the Cumberland & Westmorland Arch & Antiq Soc Vol LXXIII, p217

¹³ Clark, E (1981) *Debt Litigation in a Late Medieval English Vill*, in Raftis, J A (ed) Pathways to Medieval Peasants, p271

¹⁴ Braudel, F op cit, p256

¹⁵ Holderness, B A (1976) *Credit in English Rural Society before the Nineteenth Century*, with special reference to the period 1650-1720, in Agric Hist Rev, p106

¹⁶ Holderness, B A (1976) op cit, p98

fraught with difficulty. A loan or sale at interest, made by someone during times of shortage, is a response to the creditor's *will* to lend, whereas his debtor in the same loan is responding to his *need* to borrow. The transaction certainly leads to a Subsistence Debt but the mentality of the creditor remains that of the money-lender or merchant. As one individual may have been both debtor and creditor in several different transactions he may easily have lent and borrowed on the basis of both need and want at different times, in different deals which ran concurrently. This situation would have been particularly prevalent in any society, where there had been some specialisation of skills, but which was still dependent on barter, payments in kind and money of account - in many parts of rural Scotland this remained the case until the end of the eighteenth century.

In seventeenth-and eighteenth-century rural Scotland the basic requirements of daily living were largely met from the products of a system of self-sufficiency; from the harvest of the land, from the skills of shoemaking, spinning, carpentry and building and from direct local exchange. Yet, there was almost always a shortfall, a gap which had to be bridged by the import of goods from outwith the local exchange system. This margin was particularly apparent in the Highlands, where from about

1600,¹⁷ large quantities of meal had to be bought in to sustain the local population as the diet of the people became increasingly, and ultimately almost entirely, one of meal rather than meat.¹⁸ The grain shortages were not the result of bad harvests or particularly severe winters but of the poor soil, difficult climate and, consequently, the low yields achieved even where grain could be grown.

The imports of meal were, then, not merely marginal or occasional but according to Gray, formed a continuous and exhausting drain on the peasant's money income.¹⁹ The change in diet from meat to meal was not made through choice but from economic necessity - meat prices having risen beyond the means of the majority of the population. Although the export of cattle, and related import of meal to the Highlands, was generally more profitable than subsisting on the local produce, the outcome was the same for the peasant; the growing movement towards involvement in commercial exchange would actually have increased the peasant's need for cash as he now had to pay for his meal either in cattle, coinage or credit.

The droving trade itself was dependent on the creation of

¹⁷ Gibson, A J S & Smout T C (forthcoming 1989) Scottish Food and Scottish History 1500-1800. This paper considers the growing systems of exchange in Scotland in detail. Although the emphasis is on the effect on diet the economic situation of the commonality is also examined.

¹⁸ *ibid.*, particularly pp28-31

¹⁹ Gray, M (1957) The Highland Economy 1750-1850, pp43-4

credit. Without coinage, credit facilities were generated spontaneously by those within the system; promissory notes and bills proliferated. Those producing the cattle - mainly the tenantry - therefore had to be willing to accept payment either in credit or kind as the shortage of specie was severe.

The claim that the fundamental weakness of Scotland's internal trading system was in the refusal of anyone in the lower social orders to accept payment in anything except coin or kind,²⁰ founders on this point. Although substantiated by contemporary opinion:

"Bills of credit can never serve the uses of money...because no man can be compelled to believe anything to be good but what he thinks is so, and if people whither from reason or fancy, shal not think bills as good as money, they cannot be forced on them",²¹

there is, nevertheless, substantial evidence of bills being accepted, and astutely used, by the peasantry within an estate economy. For instance, Boswell and Johnson recorded the use of drovers' bills in rent payment on Skye.²² When possible, payment in cash was always preferable and frequently the seller would take a lower price to ensure at least a proportion of it was paid in coin. Cash was essential to pay for small goods bought outwith the local sphere of exchange - when the

²⁰ Smout, T C (1963) Scottish Trade on the Eve of ^{the} Union 1660-1707, p124

²¹ *ibid*, p124, from A Letter to a Member of Parliament from a wel-wisher in the Country in Relation to Coin, Anon. (1705), p3

²² Boswell, J (1773) Journal of a Tour of the Hebrides with Samuel Johnson, p172-3: "The rents are paid in bills which the drovers give; and these the Lairds get money for at Edinburgh, and never bring it here."

transaction was with a stranger or, at least, with someone who was moving on:

"The people consume a great deal of snuff and tobacco, for which they must pay ready money; and pedlars who come about selling goods, as there is not a shop on the island, carry away the cash."²³

Cattle sales were, however, based on a system of credit, usually in the form of bills of exchange at every level:

"The farmers, then, do sell their cattle to these drovers upon credite, at the drover's price (for ready money they seldom have) or to the landlord at his price, for payment of his rent. If this last is the case, the landlord does again dispose of them to the drover upon credite, and these drovers make what profite they can by selling them to grasiers or at markets."²⁴

This is not to suggest that in the lowest ranks of society - the sub-tenants, day-labourers and cottars - there was widespread use of notes and bills of exchange. These were the people who would have rejected paper payment most frequently. As is so often the case with Scottish studies it is this large sector of the population which remains frustratingly anonymous. If as suggested by Houston's recent work on literacy levels,²⁵ approximately 80% of the men in this section of society and an even higher proportion of the women, were illiterate around 1700, this fact in itself would have acted as a barrier to the acceptance of bills or bonds. The

²³ *ibid.*, p173

²⁴ Gartmore MS (1747) *An Inquiry into the Causes of Rebellions in the Highlands of Scotland*, p359

²⁵ Houston, R (1982) *The Literacy Myth?: Illiteracy in Scotland 1630-1760*, in *Past and Present* No 96, p93

suggestion that this group would not have accepted payment in anything but cash or kind seems from both contemporary opinion and recent research to be substantiated. As will be shown later (6.1.2 & 6.1.3) there may well have been a socio-economic threshold under which people were largely excluded from taking any functional part in the credit market. Indeed, there may have been a subsidiary credit network which functioned almost exclusively in that sector.

The cattle/meal relationship was less apparent in the lowland areas yet farmers there also suffered a shortfall between their ability to produce and their needs for survival. Sometimes the margin was caused by food shortages but, by the 1600s it was more often recognised in terms of the iron (for tools and tackle), salt (for winter preserving) or wood (for buildings, implements and furniture) which all had to be imported into the local economy.

The other 'essential' of peasant life was finding the time, produce, or cash to pay the commitments due to the laird. Time was spent in the fulfilment of labour and military services whilst precious grain and livestock were demanded as rents in kind or, along with linen, had to be sold to generate the cash required to pay levies, grassums and rentals as well as local and national taxes.

The farmer's grain yield was divided in three by the

old adage, "Ane to saw, ane to gnaw and ane to pay the laird witha",²⁶ a trinity of commitments analagous with the three spheres of exchange in which he lived:

- a) Self-sufficiency and local exchange
- b) Exchange with external area
- c) Dues to laird and state

The extent and significance of each of these as it functioned on the Grandtully Estates is examined later (6.1.2, 6.1.3 & 7.0).

Here the concern lies with the role of credit in each of these spheres of exchange. Amongst people exposed to the common risk of uncertain seasons and perishable crops, the most frequent, and informal sort of credit exists - that of mutual aid. In the above classification these transactions would fall within the sub-forms of 'no economic motive', 'mutual obligation' and 'deferred payment'. Rarely are these debts recorded and we can only assume their frequent occurrence from the evidence of anthropological studies and from our own experience of everyday living.

Undoubtedly a very high proportion of these credit arrangements were transacted in kind. Where there had been specialisation in crafts and skills payment in kind would have been to the advantage of both parties. Even as late as 1775 Adam Smith noted that "...it is not

²⁶ Graham, H G (1899) *Social Life of Scotland in the Eighteenth Century*, p165

uncommon...for a workman to carry nails instead of money to the baker's shop or the alehouse".²⁷ In this way the purchaser saved on precious specie whilst the vendor obtained a commodity which would otherwise only have been obtainable in the wider sphere of exchange (b above) and would inevitably have had to be purchased in cash.

At this local level of exchange, the ancient systems of barter, payment in kind and even self-sufficiency itself were all, often unconsciously, employed as expedients for economizing on specie. Where an exchange of goods took place, whether or not payment was deferred, the notional units of "moneys of account", the pounds, shillings, merks and pennies, must frequently have been employed, if not actually voiced. It is certain that they came into use if the transaction was not completed and the accused felon taken to court (5.2.2). Furthermore, from the late sixteenth century "there was devised a system of accepted annual 'fiars prices', to ease translation of obligations from grain to money"²⁸ (6.1.1). These prices were set and used in accounting units and must often have been employed for guidance in grain sales and litigation referring thereto (6.1.1). Nevertheless, as mentioned above, payment in kind had diminished little by the end of first half of the eighteenth century. This was not only a reflection of the lack of available coinage but

²⁷ Smith, A (1775) *Wealth of Nations*, Vol I, pp20-1

²⁸ Mitchison, R (1984) *Lordship to Patronage: Scotland 1603-1745*, p49

also a reaction to the problems of inflation:

"...preference for income in grain rather than cash was prudent in a period of undeveloped marketing and sharply fluctuating prices.....A cottar might farm some land but he would have to draw most of his support from working on the land of others, whether as a labourer to the miller or a farm servant. His status and security would be the greater the more that his payment came in kind and the less in money".²⁹

However, whilst fluctuations did occur there was in fact no significant inflationary trend in grain prices over the period under study (6.1.1 & Fig 6.1). Knowing that payment in kind was a common occurrence, it can be surmised that outstanding debts had frequently been incurred in kind - another factor which limits the questions which can be asked of the data (6.1.1).

Thus, for whatever reason a debt was incurred or enabled, credit was certainly a routine part of life for a large proportion of the people of rural Scotland during the early modern period. The data examined from the Grandtully Estates in Chapters 5 and 6 go some way towards explaining the workings and function of petty debt in the agricultural economy.

²⁹ Mitchison, R (1978) *Life in Scotland*, p65

2.2.3: Usury in Scotland

Although professional money-lending does not seem to have featured widely in rural Scotland, part-time usury was certainly a significant by-employment amongst the peasantry and artisans. The following section attempts to outline its role and ascertain its status in the economy as part of the overall picture of indebtedness in Scotland.

Scots, so often characterised as mean and grasping, have had little good to say about the money-lender or ockerer who has featured in their history across the centuries. In his *Dance of the Sevin Deidly Synnis* Dunbar bracketed the usurer with some unsavoury individuals:

"Nixt him in dans come Cuvatyce,
rute of all evill and grund of vyce,
that nevir coud be content;
catyvis, wrechis, and ockeraris,
hud-pykis, hurdaris, and gadderaris,
all with that warlo went...."¹

Early references to usury in Scotland suggest a similar pattern of development was followed to that seen in medieval Europe. Unfortunately, however, the ministry of Scotland has not bequeathed to us a similar collection of tracts on usury to that available for England.

¹ Dunbar, W (c1490) *The Dance of the Sevin Deidly Synnis*. In *The Poems of William Dunbar* ed D Laing, pp49-53, lines 55-60; under the sin of covetousness Dunbar lists ockeraris or usurers along with the miserable (catyvis), the wretched (wrechis), misers (hud-pykis), hoarders (hurdaris), and accumulators (gadderaris). From the glossary of "A Choice of Scottish Verse 1470-1570" MacQueen, J & W (1972)

Certainly there is a wealth of material concerning debt, credit and usury in Scotland's legal archives, (including here the Kirk Session records) but few lengthy discourses were written or have survived from the churchmen or other commentators.

The Scottish parliament of c1425 legislated that contracts relating to usury need not be honoured.² Curiously, however, whilst still maintaining the illegality of money-lending (for gain), parliament also stipulated that usurers would not normally be convicted until after death and only then would their goods be taken by the king and any heirs disinherited. Furthermore, if the usurer desisted and repented, the penalty would not be inflicted.³ Presumably there was already some recognition of the need for credit and borrowing at interest in an economy so desperately short of the coinage. The law-makers were in an awkward position; being sufficiently sophisticated to appreciate the need for credit in order to enable trade to grow and flourish, whilst still having to condemn usury as an immoral, and therefore, illegal practice as long as the church and the pious stood so strongly against it. In John Gau's "Richt Uay to the Kingdom of Heuine" he was in no doubt about the role of the ockerer. Under the heading of the 8th commandment he said,

² APS 1 Reg Maj, Vol I, p606 c32

³ APS 2 Reg Maj, Vol I, p618 c46

"Thay sine aganis the comand that comittis thift or okker or ressid fra oders throw power and strintht ...Thay that holdis thair seruandis feis fra thayme thay that denisz thair dettis and wil noth pay thair crediturs / thay that wil not help thair nichtburs in thair necessite ad will notht len to thayme in thair mister without okker money or service or reward."⁴

Apparently, straightforward theft was hardly felt to be more of a transgression than lending at interest. Forty years later the clergyman in Wilson's *Discourse* was reiterating Gau's philosophy:

"And like as he is a theefe that stealeth but one halfe peny with a felonious entente, so is he an usurer that by contracte taketh but one halfe peny over the principill in respecte of tyne and both are deadly synners before god."⁵

In the meantime, however, the authorities turned a blind eye to usurious dealings. Allowing financial transactions an easy passage and extending a degree of legal leniency to those who lent money. Although debtors too had some protection under law (3.0).

By 1550 Calvin had accepted the "necessity for some payment to be made for the use of capital in many commercial transactions",⁶ although only with adherence to seven specified rules devised to safeguard both the debtor and society:

It was wrong to exact usury of the needy

It was wrong to oppress the poor by demanding

⁴ Gau, J (c1533) *Richt Uay to the Kingdom of Heuine*, p16

⁵ Wilson, T (1572) *A Discourse upon Usury*, p181

⁶ Robertson, H M (1933) *Aspects of the Rise of Economic Individualism*, p117

greater security than they were well able to afford

It was wrong to insert any clause in the loan contract which was contrary to natural justice

It was wrong to take payment for a loan unless the borrower made a gain equal to or greater than that of the lender

It had to be recognised that a practice was not necessarily just because it was in common use

All contracts were illicit which were not more to the advantage of the state than to its disadvantage

It was illicit to take a higher rate than the maximum allowed by the civil power⁷

Now the pendulum swung further towards the protection of the debtor and away from the creditor. Calvin notwithstanding, the Scottish clergy continued to rail against the money-lenders, especially within the confines of the Kirk Sessions. The General Kirk of Edinburgh caused those guilty of exporting wheat illegally or lending money at usury to make public repentance.⁸

Nonetheless, with the increasing power of secular elements in trade legislation, continuing demands from merchants and the gradual crumbling of the "strictly ethical approach to usury",⁹ legalisation was bound to come. Further pressure was added by figures such as Thomas

⁷ Calvin, J (1617) *De Usuris Respondum*, quoted in Marshall, G (1980) *Presbyteries and Profits*, p250

⁸ Mathieson, W L (1902) *Politics and Religion, A Study in Scottish History*, Vol I, p186 & 203

⁹ Lythe, S G E (1960) *The Economy of Scotland 1550-1625*, p104

Wilson¹⁰ who spoke out against the clergy in his *Discourse on Usury*:

"The preachers crie out continually against all usurers....in all their sermons; and yet what availes it? Nothing at al."¹¹

Finally, as interest rates were forced up by the demand for coin to pay the Baltic merchants for the grain being imported to Scotland,¹² usury was given legal approval in 1587: "It is not lesum to take ane greater rent for the 100 pundes nor ten pundes or five bolles victual"¹³ and only persons making bargains for a higher interest rate would be punished as usurers.

There were other forms of usury. That of buying in times of dearth to sell in times of plenty has already been mentioned; more commonly this was known as *regratting* and appears frequently as a charge in local courts. In 1567 the burgh council of Lanark,

"...statuit that all personis that ragrattis the brucht sall pay for the first falt xl s., the nixt falt fyve merkis, and the third falt benessing of the toun."¹⁴

Two other types of usury are disclosed by the Acts of Parliament. The first concerns those who acquired

¹⁰ Dr Thomas Wilson, although ultimately Dean of Durham, was a layman. The author of *Arte of Logique* and the *Arte of Rhetorique*, he was a Member of Parliament (English), Master in the Court of Requests, Ambassador to the Netherlands and Secretary of State; clearly not a man whose writings could be disregarded by men of business as the ramblings of a parson. See R H Tawney's introduction to Wilson's *Discourse on Usury*.

¹¹ Wilson, T op cit, p353

¹² Wormald, J (1981) *Court, Kirk and Community*, p175

¹³ APS (1587) VOL III, p451 c35

¹⁴ Burgh of Lanark Records and Charters 1150-1722, p37

wadsets of land which provided a greater annual income than the value of the interest on the sum lent. If in the loan agreement the creditor stipulated that he would not be responsible for, and bear the cost of, the "hazard of the fruits, tenants, wars or troubles"¹⁵ then he was guilty of usury.

The second type appeared on the statute books between 1690 and 1702. No less than three times the legislators declared that it was usurious for a creditor not to allow his debtor to retain a proportion of his annual rent in order that he could pay his taxes!¹⁶

Usury seems to have been ubiquitous in Scotland, both geographically and socially, both before and after the 1587 Act. Taking many forms it intertwined with and was often concealed by other forms of economic transaction; interest could even be disguised as 'full board':

"...a man who is possessed of an hundred golden or sun crowns, will lend them to a merchant, for which the merchant will maintain him for a whole year in his house, and at his table,¹⁷ and at the end of the year will return him his money".¹⁷

Whilst accepting, therefore, that the vast majority of usurious transactions might not be recognisable in the

¹⁵ APS (1661) Vol VII, p319

¹⁶ APS (1690) Vol IX, p236; (1698) Vol X, p130; (1702) Vol XI, p21

¹⁷ As noted by Estienne Perlin in 1551-2 in Brown, P Hume (1891) *Early Travellers in Scotland*, p77. The frequent occurrence of this sort of loan is substantiated by Fynes Moryson in 1598 when he said "...I have found that for the lending of sixtie pound, there wanted not good citizens who would give the lender a faire chamber and a good dyet as long as he would lend them the money.", *ibid* p81

first instance and that they often went unrecorded, it is still possible to get some impression of the extent of their occurrence from the printed sources alone. The evidence of contemporary commentators, literature and legislation all points strongly towards there having been a vast nexus of usurious dealings.

This impression is further substantiated in the year 1611-12 when a clear picture of money-lending as a "bye-employment"¹⁸ rather than a profession or full-time occupation, emerges in the Privy Council register: on the 19th of November 1611 an Act of Council was passed intimating an increase in the rigour of prosecutions for ockery. During the previous 4 months there had been only one such prosecution whilst in the following 8 months no fewer than 350 people were prosecuted for charging more than 10% interest on loans. This is not to suggest that there had been a sudden increase in the usurious tendencies of the Scots, but merely that the authorities saw a clampdown on illegal lending as a means to acquire more funds through the "confiscation of all their moveables and punishment in their persons as ocherers".¹⁹ This decision provides a rare opportunity to appreciate, easily and quickly, that ockerers were not only merchants and traders but came from every walk of life. Of the 350 prosecutions, 31 took place in

¹⁸ R H Tawney in Wilson, *Top cit* p21

¹⁹ Reg Privy Coun Scot (1610-13) Vol IX, p348

Perthshire:

Name	Occupation	Residence
Andro Lyell	Maltman	Perth
Robert Broun	"	"
Laurence Wilsoun	"	"
Helene Donaldsone	Relict of Andro	"
	Andirsoun, Skinner	
Margaret Drummond	Relict of Johnne	"
	Rentewell	
Robert Thomesoun	Baxter	"
John Dawsoun	Tailor	"
George Johnnstoun	skinner	"
Johnne Broun	Weaver	"
James Merschell	Merchant	"
Patrik Pitcarne	-	-
Margaret (Helene?) Donaldsone, spouse of Patrik Pitcarne		
Jonet Mathew	Relict of Johnne	Perth
	Hendirsoun	
William Doulson	Merchant	"
William Diksoun	Skinner	"
Alexander Rois	Tailor	"
Robert Blaikwood	Burgess	"
William Williamsoun	Baxter	"
Andrew Matheu	Lister	"
Thomas Lamb	Maltman	"
George Johnnestoun	Merchant	"
Hew Stewart	Merchant	"
Gilbert Robert्सoun	Skinner	"
Robert Robert्सoun	Skinner	"
William Dykis	Merchant	"
Harie Ruthven	Merchant	"
Adam Grant	Merchant	"
Johhne Dikis	Merchant	"
William Stobie	Skinner	"
David Taileour	Weaver	Methven
Patrik Duncane	Cordiner	Inchemechell ²⁰

The fact that all except two of the cases were of residents in Perth might suggest that money-lending was only a feature of urban living but, as will be shown, rural dwellers also borrowed and lent money enthusiastically. Nor should it be assumed that townspeople were more dishonest than their rural

²⁰ *ibid.*, p348

counterparts; it seems likely that the distribution of cases merely reflected the ability of the authorities to identify a reasonable number of illegal loans with most ease. It is also interesting to note that the ministry did not need long to take advantage of the legalisation of usury. Some money-lending clergy not even staying within the specifications of the law - during 1611-12 eight ministers were summoned in front of the Privy Council and were charged with the crime of ockery.²¹ The crime certainly seems to have been both habitual and ineradicable in the Scottish populace.

²¹ Wormald, J op cit, p126; also the Privy Council Register Vol IX (1610-13)

Chapter 3: Debtors, Imprisonment and the Privilege of Girth

In chapter 2 various aspects of the mechanisms and function of debt were considered, but little attention has so far been paid to social attitudes towards indebtedness and the way in which it was treated throughout Scotland's history. The following chapter examines this aspect of the subject through a phenomenon ubiquitous in Europe but uniquely used by the Scots in relation to debt.

The Right of Sanctuary, or, as it was known in Scotland, the Privilege of Girth has had a unique part to play in the history of Scotland's debtors and reflects an approach to indebtedness very different from that found in England.

The Right of Sanctuary has been romanticised by many writers, not least the idealistic Victor Hugo,¹ but in pre-Reformation Europe the 'Sanctuary' played an entirely functional role in the judicial process. In general terms a person who had committed, or was suspected of having committed, a crime, could take refuge in a church or area of consecrated ground. There followed a period of grace, usually forty days, during which the official legal procedures could be set in motion. At a time when

¹ As exemplified in Hugo's novel about 15th-century Paris, Notre Dame de Paris which later became world famous in the film 'The Hunchback of Notre Dame'.

justice was often a private and personal matter the existence of sanctuaries enabled "an alleged offender to escape his private avengers and ultimately seek refuge in public hands".²

Throughout Europe the concept of sanctuary as a recognised component of the law, was largely rejected around the time of the Reformation; Francis I abolished the Right throughout France in 1539, the Papacy withdrew it from assassins, heretics, traitors, brigands and those who stole from churches or on highways in 1591, whilst in England an Act of Henry VIII, passed in 1540, so prescribed the function of sanctuary it was rendered invalid.³ However, in Scotland the Right of Sanctuary, as a legally recognised institution, was retained at Holyrood in Edinburgh. This was no archaic legislative relic, but a privilege which featured in the judicial process until the late nineteenth century. The reasons for this conscious retention of a system which had been discarded throughout the rest of Europe must be sought in the Scottish attitude towards debt and indebtedness - after the Reformation only debtors could claim the Right of Girth and seek asylum at Holyrood.

² Weisser, M R (1979) *Crime and Punishment in Early Modern Europe*, p55

³ Although the 1540 Act was repealed in 1603 and common law restored, sanctuary was finally abolished as a legal institution in 1623-4: "certain so called sanctuaries existed till the eighteenth century, which gave practical immunity to fraudulent debtors and even to criminals. They existed in spite of statutes passed to suppress them, and did not wholly disappear till the arm of the law was strengthened by the establishment of an efficient police system". W S Holdsworth (1903), *A History of English Law*, Vol III, p306.

The Debtors Act of 1880 saw the final abolition of imprisonment for civil debt in Scotland (imprisonment for debts of less than £8 6s 8d had then been incompetent for forty-five years). The abrogation of arrest for civil, non-fraudulent debt marked the end of a fascinating sequence of legislation. The legal position of the debtor having long been characterised by what seemed, superficially, to be an inconsistency in the law. The division was encapsulated in Bell's dictum pertaining to debtors which states that:

"The spirit of the law in Scotland is mild, in regard to the imprisonment of debtors: while it is sufficiently vigilant to prevent fraudulent absconding".⁴

Certainly there was a substantial body of law which discouraged creditors from having their debtors incarcerated; from 1654 onwards there had been rigorous attempts to moderate the laws against debtors.⁵ Cromwell and his council were particularly active in providing relief for debtors but most significant was the "Act of Grace", passed by parliament in 1696. This stated that:

"Creditors imprisoning debtors who cannot aliment themselves must provide an aliment of at least 3s a day or consent to their liberation, if they refuse the magistrate w[i]t[h]in 10 days [will] set the prisoners at liberty w[i]t[h]out being liable for the debts."⁶

Not only did this Act apply to those imprisoned but also to those in sanctuary (see below). The basic principle

⁴ Bell, G J (1860) Principles of the Law of Scotland 5th ed. sect 2315

⁵ APS Vol VI ii (1654) 822 b, (1656) 759 a, 759 b, 760 a, 762 b

⁶ APS (1696) General Index and Vol X, p66 c32

of this Act remained in law until 1880; although by the time Howard visited Scotland's prisons in the 1770's the magistrates usually ordered an alimentation payment of 6d (sterling) per day. After 1825 the incarcerating creditor was bound to pay a deposit for any aliment ordered; the award of aliment depending of the status of the prisoner. Once the deposit of 10s was spent the debtor was freed if no further sum had been lodged.⁷ Between 1604 and 1688 several Acts were passed which ordered debtors to wear distinctive clothes when they were released "ane hat or bonnet of yellow colour" and in the case of bankrupts "a coat half yellow, half brown".⁸

A further deterrent to incarceration of debtors was the additional charge for "caption" - the warrant for the apprehension of a debtor - which was paid by the creditor to the gaolers. This fee varied but was commonly 2s 6d or 5s (sterling) or, as in the Edinburgh Tolbooth, 6d per £1 of debt.⁹ Furthermore, by the process of *cessio bonorum*, a debtor could obtain his liberty after one month in prison "by making a surrender of all his effects to be divided among his creditors".¹⁰ Later, if the debtor's circumstances improved his effects might still

⁷ Cameron, J (1983) *Prisons and Punishment in Scotland*, p62

⁸ *ibid.*, p28-9

⁹ *ibid.*, p61 and Neild, J (1812) *State of Prisons in England, Scotland and Wales*, p300

¹⁰ Howard, J (1929) *State of the Prisons in England and Wales with an Account of some Foreign Prisons 1777/1780 and 1784*, p147

be subject to the claims of his creditors.

This was sensible as well as compassionate legislation. A debtor could rarely hope to improve his affairs from inside a prison cell whilst a creditor could always use alternative law to prosecute for payment; very different from the English situation where a debtor was imprisoned until he had paid 20s in the pound¹¹. English law never supposed that a man could not pay what he owed.¹² This led to the establishment of institutions such as the King's Bench prison which was populated entirely by debtors who often languished there for the remainder of their lives.

The Act of Grace must also have gone a long way towards preventing 'vexatious litigation'; there was little point in having to support your debtor in prison if there was no prospect of ever being paid, however much personal animosity might be involved. Although Howard and other commentators saw Scotland's law on debtors as compassionate, self-interest was probably the main motivating force behind the Act of Grace. Parliament was clearly determined that neither the exchequer nor the royal burghs should pay for the upkeep of debtors and was indirectly attempting to reduce the prison population. In fact, the

¹¹ Howard, J op cit, p147

¹² Halkerston, P (1801) A Treatise on the History, Law and Privileges of the Palace and Sanctuary of Holyroodhouse, p50

Act operated so as to mitigate the law of imprisonment for debt. The state clearly preferred creditors to utilise the alternative legislation available which enabled them to poind¹³ for debts and distrain goods and land. Parliament was, however, always aware of its own interests, declaring no less than three times that it would be usurious, and hence illegal, for creditors not to grant to their debtors the "retention of a proportion of their annual rents for payment of taxation".¹⁴ Also, as long as a debtor had other goods or lands, his horses and oxen which he used for ploughing could not be poinded by his creditors.¹⁵ The authorities had no desire to swell the number of destitute people. If debtors were actually imprisoned, despite the legislative discouragement, the second half of Bell's dictum on the law relating to debt, that "it is sufficiently vigilant to prevent fraudulent absconding"¹⁶ is seen to reflect a particularly harsh piece of legislation which operated all too efficiently. Although debtors could be scourged or put in the stocks long periods of imprisonment were, prior to the Act of Grace, also a common punishment for the impecunious debtor. This in itself was not unusual

¹³ Poinding was a diligence or form of law by which a creditor could endeavour to make good his payment. As the earliest diligence recognised in the law of Scotland, poinding enabled a debtor's moveables to be directly transferred to a creditor. Letters of poinding could be used to remove goods from a debtor's lands and have them carried to the market cross of the head burgh of the sheriffdom where they were then sold.

¹⁴ APS Vol IX (1690) p236 b; Vol X (1698) p130 b; Vol XI (1702) p21 b

¹⁵ APS Vol II (1503) p246 c50; Vol III (1581) p217 c14

¹⁶ Bell, G J op cit, sect 2315

but in the case of debtors it was specified, in law, that they would be allowed no fresh air or exercise. Known as *squalor carceris* the law specified that,

"After a debtor is imprisoned, he ought not to be indulged with the benefit of the air, nor even under a guard; for Creditors have an interest, that their debtors be kept under close confinement, that by *squalor carceris* they may be brought to pay their debt".¹⁷

The evils of this legislation were undoubtedly compounded by the fact that in the event of a debtor escaping his gaoler, and through him the magistrate who issued the warrant, was responsible for the debts of the escaped prisoner. As this situation remained on the statute books until 1839 debtors were,

"consigned to the closest and most severe confinement...often crowded together in a close and fetid room which (they were) never allowed to quit".¹⁸

This then was the other side of the coin, for those debtors who were imprisoned despite the Act of Grace, and subsequent related legislation, captivity was peculiarly horrible.

For some hard pressed debtors there was an option. If it could be attained the privilege of sanctuary offered some degree of refuge. A person retiring to sanctuary was automatically protected from diligence for the first twenty-four hours after his arrival. During that time he

¹⁷ Erskine, J (1773) *Institute of the Law of Scotland* quoting Act of Session 14th June 1771.

¹⁸ Gurney, J J (1819) *Notes on a visit made to some of the Prisons in Scotland and Northern England*, pp107-8

had to be booked into the sanctuary and obtain an official protection which in 1800 cost two guineas.¹⁹ Describing this process in 1801 Peter Halkerston, then bailie of the abbey and sanctuary wrote,

"When a protection is demanded it is always granted and upon production thereof, the officers of the jurisdiction, the constables of the bounds, the Abbey guards and the whole inhabitants are bound to turn out and protect the debtor".²⁰

Sanctuary had not always functioned so smoothly. Remarkably little is known about the actual workings of the Right of Sanctuary. The privilege was certainly not originally intended for, or used by, debtors although ultimately its use became exclusively theirs. The Right of Girth has ancient origins. Skene suggests that it was already an accepted system by the sixth-century AD.²¹ Initially it was a privilege extended only to those who had killed someone, it enabled them to flee to designated areas of royal or ecclesiastical lands. There, "the shedder of blood could obtain...not only protection but fair trial and restriction of the range of the blood feud from which he fled".²² At face value this may seem to provide a loophole through which felons could escape, but in fact it was a means of ensuring non-partisan trial in an age of often local, bias and all too swift 'justice'.

¹⁹ Peter Halkerston then bailie of the sanctuary considered this fee to be exorbitant and commented that it had risen dramatically over the past few years.

²⁰ Halkerston, P (1801) *A Treatise on the History, Law and Privileges of the Palace and Sanctuary of Holyroodhouse*, p56

²¹ Skene, W F (1880) *Celtic Scotland Vol II*, p65-6

²² Hannah, A (1927) *The Sanctuary of Holyrood, Old Edinburgh Club Vol XV*, p56

For pursuers to violate sanctuary was in Celtic society a capital crime.²³

All parish churches were considered to offer some degree of sanctuary. In theory the extent of such sanctuaries was limited to the Frith stool which stood beside the altar; anyone sitting on the stool was under the protection of the Mother Church. In practice, however, the extent of Sanctuary was much greater, often including the kirkyard and beyond, figuratively described as "being within the shadow of the Frith Stool".²⁴ The right of sanctuary provided in such situations seems to have been fairly ineffectual, often being violated by those who had no fear of the penalties of sacrilege.²⁵ The most infamous of such violations occurred when John Comyn was murdered, in Greyfriars Church, Dumfries, by Robert the Bruce and his compatriots in 1306. The violation was recorded by Barbour,

He mysdyd thair gretly but wer
That gave na gryth to the awter²⁶

There were also a certain number of places were granted the right of sanctuary by the sovereign - The Great Right. This was a special privilege bestowed by the king

²³ *ibid.*, p56

²⁴ Mackay, P H R (1976) *Sanctuary and the Privilege of St John*, p5

²⁵ The most infamous of such violations being the murder of John Comyn, in Greyfriars Church, Dumfries, by Robert the Bruce and his compatriots in 1306.

²⁶ Barbour, J (c1374) *The Bruce*, STS (1894) Vol I, ii, 44 (gryth and awter translating as girth and alter respectively).

on religious houses of his choice. It could encapsulate substantial areas of land around these establishments in which fugitives could seek the 'King's Peace'. The functioning of the Right of Girth in these places was dependent on the presence of the religious household which was required to shelter and feed refugees.

The sites themselves were sometimes chosen because of a personal preference of the sovereign,²⁷ but there also seems to have been some conscious attempt to provide a good coverage of the country - basing the sanctuaries on or close to main lines of communication. Such sites included the richly endowed hospital at Soutra, the monks' cell at Lesmahagow, the Preceptory at Torphichen, the ancient monastery at Dull, the Preceptory at Tain, and Innerleithen church. Records of the endowment of sanctuaries survive from the reign of David I but even then the privilege seems to have been long established.

In addition to ecclesiastical sites the Great Right could be bestowed on royal lands and residences. The evidence is scant, but it seems likely that the Right of Sanctuary was bestowed wherever the royal court happened to be. This would ensure that the king was not deprived of the assistance or advice of his subjects should any civil

²⁷ One example of this occurred when Malcolm IV bestowed the Great Right on Innerleithen church after his dead son had lain there overnight.

action be brought against them.²⁸ The only royal sanctuary to endure, after the Reformation, was Holyrood.

The extent of the areas designated as sanctuaries was usually marked by girth crosses and/or chains. Relics of the system have survived as place-names, such as Cross-chain Hill and Girthgate at Soutra, or are still extant, like the impressive girth cross at Dull or the remnants of the sanctuary wall of Holyrood. Others feature in the documentary record in some way: the girth cross which used to stand at the foot of the Canongate in Edinburgh (Fig 3.1), marking the boundary of the Holyrood sanctuary, was recorded for its alternative use as a place of execution. In July 1600 Robert Birrel noted that,

"Johne Kiriland of Waristone murderit be his awin wyff and servant man, and her nurische being also upone the conspiracy. The said gentilwoman being apprehendit, scho wes tane to the girth crosse upon the 5 day of Julii, and her heid struck fra her bodie at the Canagait fit..."²⁹

Another noteworthy monument was MacDuff's Cross which stood near Newburgh in Fife. It is supposed to have been a memorial to the defeat of Macbeth which, as it marked the restoration of an exiled king, conferred peculiar privileges on the clan MacDuff, "whose valour contributed to that event".³⁰ Whether or not this was the reason for

²⁸ Halkerston, P (1801) *op cit*, p42 and Erskine, J (1773) *Institute of the Law of Scotland*, Vol 4 p25

²⁹ Birrel, R 'Diary of Robert Birrel from 1532 until 1605' in J G Dayell (ed) *Fragments of Scottish History* (1798), p49

³⁰ Chalmers, G (1824) *Caledonia*, Vol II p466

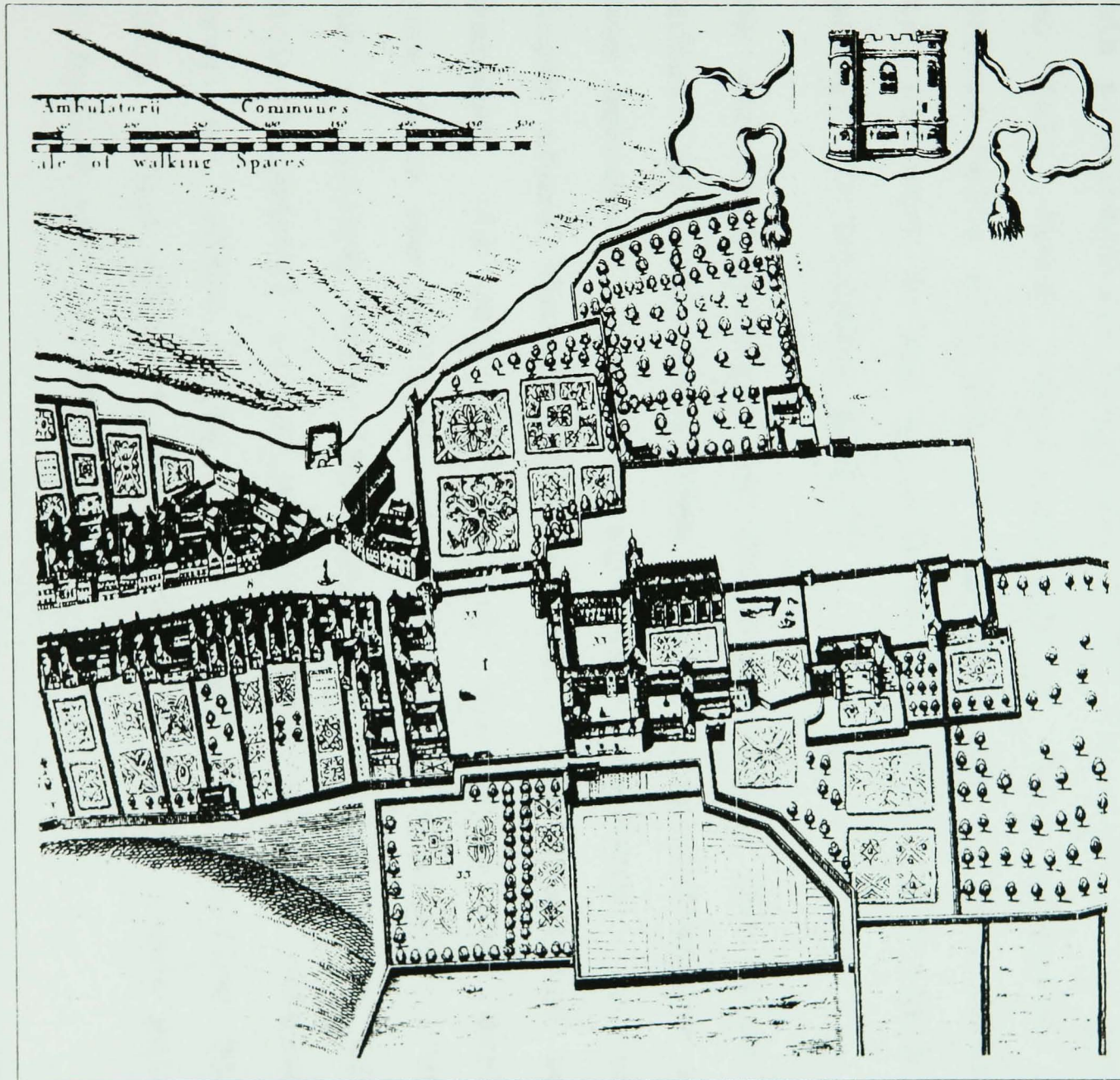


Fig 3.1 The lower end of the Royal Mile showing the Girth Cross and northern boundary of the Sanctuary (from Gordon of Rothiemay 1647)

its foundation the area certainly acted as a 'family' sanctuary.

"The Croce of the Clan Makduffe dividis Stratherne fra Fife abone Newburgh beside Lundoris. The quhilk had privilege and liberty of girth, in sik sort that when ony man-slayer, being within the ninth degree of kin and bluid to Makduffe sumtime Earle of Fife, came to that Croce and gave nine kye and ane Colpindach [a young ox or cow], he was free of the slauchter committed by him".³¹

This privilege was certainly taken advantage of by those who fell within its jurisdiction. Sir Alexander de Moravia being only one of many recorded to have claimed its use when he was accused of the murder of William de Spaldyne in December 1391.³²

The sanctuary offered by the area around the Cross of Macduff seems to have been both more comprehensive and less democratic than that available elsewhere. In other places where the privilege of the Great Right had been bestowed, the only 'man-slayers' who could seek asylum were those who could claim 'Slaughter on Suddenty'. This was a killing which had occurred in the midst of a violent quarrel or in a hot-blooded moment, otherwise known as 'chaud melle'. Of course, any killer could claim 'chaud melle' and later when tried be found guilty of forethought murder.

The Great Right, although bestowed on a particular place,

³¹ Skene, J (1847) *De Verborum Significatione* quoted in *Liber Insule Missarum*, Bannatyne Club (1847), pxii-xiii

³² *Liber Insule Missarum*, op cit, pxiii

always covered a substantial area in which fugitives could seek the "King's Peace". Whilst in Sanctuary the Master of the Girth was responsible for the health, safety and welfare of fugitives. He had, nonetheless, a responsibility to the Crown to support and maintain law and order such that on receipt of a charge from the appropriate court he would relinquish the accused. Before doing so, however, the Master would demand adequate security (caution) for the fugitive's life and limb.³³ In this way the Great Right enabled the processes of law to function without the intervention of those attempting to "take the law into their own hands". Once under trial the accused would be convicted or acquitted under the normal rulings of the law. The most widely known, best recorded and most long-standing sanctuary was undoubtedly that of Holyrood. It is from its records, or at least those of the canons of Holyrood, that it is possible to be sure that the privilege of girth was extended to all classes of men and, therefore, all debtors.

At the time of David I a charter was granted to the canons of Holyrood which indicated that if sanctuary was sought by someone whose right to the privilege was in doubt he could undergo "ordeal by fire" or "ordeal by water". The former, endured only by the landed classes

³³ Mackay, P H R op cit, p8

"necessitated walking barefoot and blindfolded over red-hot plough-shares", the latter, undertaken by peasants involved the fugitive being bound hand and foot before being thrown into water; unlike the unfortunate 'witches' of later centuries if he floated the refugee was judged to be innocent.³⁴

It is also apparent that the duty of the Master of Girth applied equally to master and servant, requiring him as it did,

"..to deliver the runaway serf to his owner; but equally...to protect the fugitive from violence...the law recognising that the master had the right to take the serf out of Sanctuary, and to compel him to return to his home and servitude, but insisting that he had no right to mutilate or kill his serf, provided that any master who exercised his right to claim his runaway serf, must swear, before removing him from Sanctuary, that he would not punish the serf in life or limb".³⁵

Erskine suggests that under Roman law sanctuaries were, in fact, originally intended as a means of protecting slaves from the severity of their masters.³⁶

The efficacy of this endeavour towards equality in the eyes of the law cannot be judged. When it did operate as intended Sanctuary was undoubtedly an "antidote to violence and disorder"³⁷ and must have defused many a volatile situation. Unfortunately the records are too sparse to give any useful indication of the extent to

³⁴ Hannah, H op cit, p59

³⁵ Mackay, P H R op cit, pp8-9

³⁶ Erskine, J (1773) op cit, p812-3

³⁷ Mackay, P H R op cit, p9

which the Right was respected, violated or, indeed, used. Once again the most infamous of the violations involved the Comyns and the Bruce: having fled to sanctuary at Tain, Bruce's Queen and daughter were forcibly removed by the Earl William of Ross.³⁸ Whilst one of the few pre-Reformation records of the use of sanctuary by an impoverished and probably indebted man can be found in the Lord High Treasurer's Accounts for James IV; "Item, to ane pure wyff at had hir husband in girtht in Torphechin, in elimise [alms], xiiis".³⁹

Precisely when the Right of Girth was extended to debtors is uncertain. Erskine seems to suggest that since the establishment of Christianity debtors have always had the right to flee from the effects of their creditors' diligence to the refuge of sanctuary.⁴⁰ At any rate, legislation during the reign of Alexander II suggests this may have already happened by the end of the thirteenth century.⁴¹

Although the Reformation saw the abolition of religious sanctuaries, those in royal precincts continued to function. In practice this meant that only Holyrood remained in use. This probably related to the absence of the King

³⁸ Barrow, G W S (1976) Robert Bruce, p228-9

³⁹ Balfour, J (ed) (1902) Accounts of the Lord High Treasurer of Scotland Vol IV 1507-1513, p189

⁴⁰ Erskine, J (1773) op cit, p812-3

⁴¹ APS Alexander II, Vol I p401 c9

after 1603; the protection of his advisers no longer being necessary - as it had been in a peripatetic and Scottish based court. Thus although the legal status of the Holyrood sanctuary was diminished, most of the changes applied to intentional law breakers and offenders in a capital crime. For the civil⁴² debtor it remained a place of refuge.

The offered asylum was not, of course, without penalties. Until the Act of Grace was passed, debtors retiring to sanctuary had no means of support and, on arrival, any money in their possession was taken to pay creditors and the protection fee. In 1531 John Scot, "a man neither polished by learning, nor accustomed to business, nor sufficiently shrewd for practising deceit",⁴³ was, as litigant in a defeated case, rendered bankrupt. He was shrewd enough, however, to take refuge at Holyrood, but having no money could not subsist. In this case the king, hearing of his case, intervened and ordered Scot to be confined for thirty days with only bread and water. It seems that Scot in fact fasted for the thirty days but his ultimate fate is unknown. This case was undoubtedly only recorded because of the king's intervention; for the destitute without support from friends or relatives, lack

⁴² Wark, J L (1927) *Encyclopaedia of the Laws of Scotland: After the Reformation* 'The right of Sanctuary afforded protection to civil debtors only, and did not extend to debtors of the King, or to criminals (including fraudulent bankrupts), or to persons under diligence for performance of a fact within their power.' Vol 8, p40

⁴³ Hannah, H op cit, p61

of food, clothing and shelter must have been a common problem. Subsequent changes in legislation support this view.

The provision of aliment to debtors in the Act of Grace applied not only to prisoners but also to those who had fled to sanctuary and,

"there is no instance on record of the Court of Session having refused the prayer of any person in sanctuary who sued for the benefit of the Act of Grace."⁴⁴

Having claimed the benefit of the Act of Grace all the inhabitants were bound, when desired, to execute a disposition *omnium bonorum* 'for behoof of all his creditors'.⁴⁵ If this was refused, and for as long as it was not fulfilled, then the debtor was not entitled to aliment. This was equivalent to the process of *cessio bonorum* required from imprisoned debtors.

Gradually the privilege of girth did weaken, in fact if not in principle, particularly when the means of apprehending a debtor altered to allow the creditor to breach the sanctuary boundaries:

"According to the regular form, the messenger-at-arms touches the debtor's shoulder with his baton; after which he is held in law to be in custody; and should he thereafter escape and take refuge in the sanctuary, the messenger may follow and seize him there, and take him to prison."⁴⁶

⁴⁴ *ibid.*, p84

⁴⁵ Wark, J L *op cit.*, p38, and *Omnium bonorum*: a disposition conveying all the granter's goods of every description.

⁴⁶ Bell, W (1838) *Dictionary and Digest of the Law of Scotland*, p737

Nonetheless, for those who attained sanctuary there must often have been a degree of permanency about the situation. Walter Scott's description of Whitefriars Sanctuary, although imaginary, may well have been based on a knowledge of the circumstances prevailing at Holyrood and information about its past:

"The ancient sanctuary at Whitefriars lay considerably lower than the elevated terraces and gardens of the Temple, and was therefore generally involved in the damps and fogs arising from the Thames. The brick buildings by which it was occupied crowded closely on each other, for, in a place so rarely privileged, every foot of ground was valuable; but erected in many cases by persons whose funds were inadequate to their speculations, the houses were generally insufficient, and exhibited the lamentable signs of having become ruinous while they were yet new. The wailing of children, the scolding of their mothers, the miserable exhibition of ragged linens hung from the windows to dry, spoke the wants and distresses of the wretched inhabitants."⁴⁷

Although, as ever verbose, Scott draws a vivid picture. Holyrood, like Whitefriars, must have been a remarkably unhealthy place; at the bottom of the hill, receiving all the rubbish and sewage of the growing town, disease must have been rife.⁴⁸

The extent of privilege did, however, cover a circuit of about four and a quarter miles including Arthur's Seat and Salisbury Crags⁴⁹ (Fig 3.2) thus enabling refugees to take advantage of a substantial area of open countryside. Compared with the filth and confinement endured by those

⁴⁷ Scott, W (1831) *Fortunes of Nigel*, p198

⁴⁸ See I H Adams (1978) *The Making of Urban Scotland*, pp133-4, for a discussion of early sewage disposal in Edinburgh.

⁴⁹ Wark, J L *op cit*, Vol 8 p40

imprisoned under the regime imposed by *squalor carceris*, Halkerston suggests that those in sanctuary enjoyed the benefit of comfortable lodgings, salubrious air and of 'extensive romantic walks'.⁵⁰ Halkerston's remarks notwithstanding, much of the area, as today, would not have invited long-term residence.

Nevertheless, there are indications that some residents did stay in sanctuary on a semi-permanent basis. This proved to be the case for John Edington tenant of the Leith Traffickers in the land of Upper Quarryholes in 1757:

"Unable to pay his rent Edington betook himself to the Abbey Sanctuary. There he remained for two years while the Traffickers tried to discover the hidden resources they were sure he had."

His story continues, to exemplify the workings of the Act of Grace:

"In the spring of 1759 Edington ventured out of the sanctuary, and by ill luck was at once recognised and arrested. He starved in the Canongate Tolbooth for a day or two, then complained to the Bailies of the Canongate, who at once informed the Traffickers that they must pay one shilling sterling a day for the maintenance of their prisoner, or else he would be set free. Grudgingly the Traffickers remitted £5, and after eating and drinking his way through this sum John Edington was released."⁵¹

Following the abolition of the right of sanctuary in England, soon after the Reformation, Holyrood was seldom without distinguished English characters,

⁵⁰ Halkerston, P (1820) Note Respecting the Sanctuary of Holyroodhouse in A Translation and Explantion of the Technical Terms and Phrases used in Mr Erskine's Institute of the Law of Scotland, p94

⁵¹ Marshall, J Scott (1977) *Old Leith at Work*, p22

"some of them gaunt, oldish gentlemen, seemingly broken-down men of fashion, wearing big gold spectacles, who now drew out existence here in defiance of creditors".⁵²

Holyrood certainly continued to offer asylum to refugees from the upper echelons of society until well into the nineteenth century. For three years between 1795 and 1798 Charles-Philippe, Comte d'Artois, the younger brother of Louis XVI, lived within the Abbey bounds being under threat of arrest for debts outstanding in England.⁵³ Clearly the privilege was still fully functional when Halkerston, then bailie of the Abbey, was writing in 1820 although there is little to indicate whether the less well off could still afford to seek sanctuary there.⁵⁴ The Register of Protections, which included six thousand five hundred and two names, lists those who sought and were 'booked' into the Sanctuary between 1686 and 1800.⁵⁵ The majority of these names were of tradesmen of every status - from chapman to merchant - with purveyors of alcohol being particularly frequent refugees.⁵⁶ With the protection fee standing at two guineas in 1820 the truly destitute would have been unable to

⁵² Chambers, R (1859) Domestic Annals of Scotland 2nd ed, Vol 1, p97

⁵³ Mackenzie Stuart, A J (1971) A Royal Debtor at Holyrood, Stair Soc. Miscellany One, pp193-201

⁵⁴ With the rising price of the protection fee and, almost certainly, the effects of changing social attitudes few of the truly destitute were claiming the Right of Sanctuary by the second quarter of the eighteenth century. However, it is interesting to note that Peter Halkerston, as bailie of the Abbey and Sanctuary was still attempting to reduce the protection fee as late as 1801.

⁵⁵ Cadell, P (1985) The Abbey Court & High Constables & Guard of Honour of Holyroodhouse, p31

⁵⁶ *ibid*, p35. The legal profession was also well represented, soldiers and sailors of all ranks and freelance teachers all commonly seeking sanctuary.

remain within the refuge for more than the preliminary and gratuitous twenty-four hours, although the Register suggests that in such circumstances the fee was sometimes waived. Even for the 'better off' debtor it would be unwise to assume that taking the option of sanctuary was then, or had ever been, either easy or appealing. A debtor could travel outside the sanctuary limits on Sundays, when apprehension by creditors was illegal,⁵⁷ although there is evidence that to leave sanctuary at all could be unwise: on 21st July 1709 the Court of Session heard a complaint from

"a party...that had been inticed on a Sunday by one of his creditors to come out of the abbay...and been detained by him at his house, under pretence of communing, till the clock struck 12 at night, and then taken caption by a messenger, whom the creditor had ready at hand..."⁵⁸

Ironically, there was even a prison within the sanctuary precincts for those who incurred debts during their stay in Holyrood.⁵⁹

Following the Debtors (Scotland) Act of 1880 when imprisonment for debt became almost entirely unknown as a penalty, sanctuary too became obsolete although, technically, it remained in law. It will probably never be possible to establish the full extent to which sanctuary was utilised by the debtors of Scotland before 1686, but

⁵⁷ Stuart, A J Mackenzie op cit, p194

⁵⁸ Kames, Lord H H (1791) The Decisions of the Court of Session from its first Institution to the present time Vol I, p361

⁵⁹ Neild, J op cit, p199 and Cadell, P op cit, pp12-23

its very existence, and persistence, in the judicial system across so many centuries does invite the conclusion that it was seen as an important and useful element of justice.

This view is compounded by the frequency with which it features in the legislation. Even after the Reformation when its significance might have been expected to diminish, major bodies of law such as the Act of Grace indicate the continuing importance of sanctuary, specifically Holyrood, in relation to indebtedness.

Debtors were not seen as criminals in the same way as other felons - note Howard's distinction between debtors and criminals⁶⁰ - debt was something which could catch up with anyone, from any section of society and in any part of the country. People lent and borrowed freely, often without caution (security) or with inadequate caution. The act of lending could be as much a social or diplomatic act as it was an economic transaction, concerned with cementing relationships and social dependencies as with the rates of return.⁶¹

The concept of sanctuary, as it related to debtors, was simply a component part of this overall approach to

⁶⁰ In his remark that there were "more debtors than criminals" in Scotland's prisons, Howard, J op cit, p78

⁶¹ Dodgshon, R A (1985) Highland Chiefdoms, 1500-1745: A Study in Redistributive Exchange, p15

indebtedness. The Scots have long invoked their God to forgive them their debts as they forgive their debtors, but until the Victorian era the sin was not to be in debt but to be unable or unwilling to pay. That there should ever have been any shame attached to the mere fact of being in debt is in its self remarkable - as will be shown in the following chapters indebtedness was ubiquitous, unavoidable and essential. However, by the beginning of the twentieth century indebtedness had become a matter of shame and embarrassment. Even the Sanctuary, of which the Scots had been justifiably proud, was misunderstood and only 40 years after the 1880 Debtors act Harrison epitomised the change in attitude which took place during the nineteenth century when he wrote: "But what cast the deepest shadow over the district was the fact that the Palace and its precincts, including the whole Royal Park, was a sanctuary for debtors, who took refuge there to avoid imprisonment for debt, so that a great proportion of the inhabitants were sadly out at elbows."⁶² Indeed, the Victorian 'virtue' of staying out of debt is an aberration from the long history of indebtedness being a recognised social norm and necessity.

Although the above discussion of the development and use

⁶² Harrison, J (1919) The History of the Monastery of the Holy-rood and of the Palace of Holyrood House, p243

of sanctuary may not seem, at first glance, to be central to the study of debt in Scotland it does, nonetheless, epitomise a major facet of the subject. In conjunction with the evolution of the body of legislation relating to debt prior to 1880, the continued use of sanctuary reflects an important social attitude towards debt and debtors. As a social construct, overtly disliked by lawyers, the survival of the Right of Sanctuary had to be based on a recognised advantage. As Cadell recently said,

"sanctuary for debt remained a jealously guarded privilege. How did it survive? Above all it was useful. Nothing established on so slender a legal basis as a minor subclause at the end of a medieval grant to an institution which had formally been abolished could have survived otherwise."⁶³

In an economy so short of ready cash, and particularly after the 1650's, with so many estates and businesses in serious trouble following the Cromwellian period, sanctuary's importance for debtors was fully established. For the subsequent two hundred years Holyrood Sanctuary, for those who could reach it, was central to the life of many landowners and tradesmen.

Obviously for the majority of debtors the opportunity to enter sanctuary simply did not exist or was not needed - only those who were hardpressed by their creditors and

⁶³ Cadell, P op cit, pp9-10. The institution to which he refers was the Regality of Holyrood which survived the Reformation with most of its secular privileges and duties intact.

could afford to reach, or already lived in, the Edinburgh area, would make use of the refuge it offered. Nonetheless, its very existence, which was known of and guarded by the legislature, reflects a remarkably liberal approach to indebtedness by seventeenth- and eighteenth-century Scots.

PART II

Chapter 4: The Grandtully Estates

4.1: The Source Base

The choice of the four estates which comprise the study area - Grandtully, Murthly, Strathbran and Airtully - was determined through a search of the inventories in the Scottish Record Office and National Library of Scotland. In order to facilitate as comprehensive a coverage of the documents as possible, the geographical extent of the study area could not be too large. However, because in Scotland the 'Estate' represented both the basic element of rural land organisation, personified by the landowner, and also that of decision making,¹ the choice of an estate or estate complex as the basic spatial unit for study was essential. As explained in the Introduction, the evolution of this study engendered a source-led approach. Thus, the study area had already been established before the subject was honed down from a more general examination of the agricultural economy to the current research area. Whilst this was not seen as an impediment at the time it has, in retrospect, caused a number of deficiencies in the overall study (7.0). Nevertheless, the choice of a compact group of estates as the geographical area of study made it possible to

¹ Whyte, I (1980) The Emergence of the New Estate Structure. The Making of the Scottish Countryside eds M L Parry & T R Slater, p1

integrate the estate papers with the other sources identified for examination - Commissary Court Testaments and Small Claims Processes.

The selection of the specific estates in Perthshire was made for a number of reasons. The Grandtully Estates offered a geographically compact area (totalling about 30,000 acres) but covered a wide range of landscape forms (Fig 4.1). The four estates or baronies - Grandtully, Strathbran, Murthly and Airntully were all geographically connected (Fig 4.2). Of the four, Airntully was the smallest and most physically compact and despite being attached to Murthly across Cairnleith Moss, was isolated from the others spatially and socially (5.2.2 & 6.1.2). The three larger estates extended along the banks of the rivers Tay and Bran, from Aberfeldy to the north west to Kinclaven in the east. They embraced a stretch of land about 25 miles in length, included the small market town of Dunkeld and straddled the Highland Boundary Line. The geographical and economic proximity of these highland and lowland estates offered the opportunity to compare the characteristics of the credit market as it functioned across this area. This circumstance allowed certain questions to be asked; were the types of debt incurred different? Did the four estates function as one partly closed economic unit? Or did geographical isolation, in terms of either spatial distance, topographical character or economic function, lead to economic isolation,

Fig 4.1 The Topography of Central Perthshire, including the Grandtully Estates and surrounding area



despite the centralised administration? Did the four estates act as discrete economic units?

A further advantage of looking at a spatially restricted case study is that within the chosen Estate Group, being reasonably small, it was possible to identify all relevant place-names quite quickly. This was crucial in order to allow identification of documents from the Testamentary and Small Claims Processes. These are either not indexed by place at all and had to be identified from internal evidence (5.1.1 & 5.2.1), or place-names are secondary in the indexing system as in the case of the Testaments.

The intention was to examine a segment of time in the early modern period, and the year 1650 was chosen as the datum line. From the Grandtully title deeds it was apparent that by that date the four estates had become a more or less stable unit held by the Steuart family. With the mid-seventeenth century being such an important political watershed, 1650 was a critical year both nationally and locally. However, as the work unfolded it transpired that the earliest of the main runs of relevant documents in fact post-dated 1650 by about 30 years. This, as will be seen in chapter six, was most significant in the case of the small claims material which commenced in 1687.

The concluding date was also determined for both local

and national reasons. By choosing 1765, the study period could include the end of an important era in the ownership of the estates which came with the death of Sir George Steuart of Grandtully in the previous year. Nationally, it enabled the impact of the '15 and the '45 to be considered and, in theory, the effects of agricultural improvement, which was in many areas well underway by mid-century. 'In theory', because, as is shown below, the Steuarts showed little interest in improving their estates being, as they were, more concerned with politics and, particularly in the case of Sir Thomas, with money-lending (2.2.1).

The following sections outline the character of the agricultural economy of the Grandtully Estates in the relevant period. They consider, in particular, the characteristics of the land and its produce, the significance of flax and linen, and finally place the whole into the context of the local markets. Not only is this seen as a backdrop for the case study of the peasant credit market on the Estate Group, but particularly as an indicator of some of the most influential factors in the function of that market. Clearly, the actual character of any credit market relates to the kind of production within which it is set. Here, the types of crop; both arable and livestock stock must, both in themselves and in their seasonality, be reflected in the form and function of the

credit system. Even if the mechanical workings of credit transactions were similar from area to area, each system of credit extension must have developed with the changing agricultural practices and production modes and must, thereby, have taken on characteristics which were unique to each area - particularly in relation to seasonal factors such as the time of harvest or when the main cattle droves passed through.

4.2.: The Agricultural Economy

4.2.1: Farming the Estates

The economic organisation of each of the four estates was strongly dependent upon the topography of the land. Within the small area briefly described above (4.1 & Fig 4.2) the contrasts were dramatic. Airntully, the smallest and most southerly of the estates lying on the reasonably flat and fertile land of Strathord, had a southerly aspect and most easy access to the south - particularly to Perth and the string of market centres which lay along the valley of the Almond. Murthly, the administrative centre of the group, sprawled along the banks of the Tay encompassing a high proportion of good arable land and surrounding the market town and administrative centre of Dunkeld.

To the north and west respectively, Grandtully and Strathbran both consisted of broad tracts of hill land dramatically different to the landscape of the associated estates lying to the south of the Highland Boundary Line. Although further north, Grandtully encompassed a much greater proportion of arable land than its neighbour Strathbran.

"That portion of the lands of Grandtully which lies along the banks of the Tay to the east of the castle of Grandtully is generally very level, and the more eastern portion is called the Haughs of Grandtully. These grounds are easily cultivated, and are capable of producing excellent crops of grain of all kinds. The land which lies away from the river and forms the higher range, is very hilly and generally used for pasturing

cattle and sheep."¹

The breadth and fertility of the flood plain of the Tay was, and still is, much greater than that of the narrower Bran along which the Strath rises more steeply on both sides. Despite being geographically closer to Murthly than Grandtully, Strathbran was in several respects more isolated from the lowland estates. In a steep and, to the east, narrow valley the people of Strathbran were not only cut off by topography but also by culture. To cross over to the Obnies and Strathord they had to climb almost a thousand feet and travel through the pass of Little Glen Shee. To the north the situation was similar if they wanted to cross to Grandtully and the top of the Tay valley. Speaking Gaelic, the people of Strathbran were further isolated from their neighbours to the east where Scots was predominant. This is not to suggest that the people from either side of the Burn of Inshewan - "to the west of this burn Gaelic was spoken and to the east Scotch"² - would have been unable to communicate - for most would undoubtedly have been bilingual. In 1723 a row in the Dunkeld presbytery centred on the ordination of a minister who did not speak Gaelic. Despite claiming fluency in the language Alexander McLagan was, according to local lore, stoned by the people of Strathbran following his attempt to preach in Gaelic.³ The lingu-

¹ Fraser, W (1868) *The Red Book of Grandtully*, Vol I, pxiv

² *ibid*, Vol I, pxxx1

³ Hunter, J C (1918) *The Diocese and Presbytery of Dunkeld 1660-1689* Vol II, pp103-5

stic division was still sufficiently strong for it to merit mention in 1765: when the church service in Logyallochry church in Strathbran was still held in "Irish or Gallick, their native tongue".⁴ This was worthy of note in a small claims process despite being completely irrelevant to the actual litigation in progress (5.2.1).

Contemporary descriptions of life in the area are sparse. Defoe's sketch of the countryside suggests a little improved landscape - even if his comments regarding the lack of chimneys suggest little comprehension of the largely self-sufficient system.⁵

"The *Highland Houses* hereabout are very oddly built, and look most miserable and desolate, they being composed of Clods of Peat, Stone and Broom. As to Chimneys they are little acquainted with them....As to their way of living it is as odd, being chiefly on Oatmeal, boiled up in various Forms, with Water..."⁶

This description suggests that few of the new improved houses or wider range of crops which were being introduced in other areas had begun to appear around Dunkeld. Certainly, there is little evidence in the estate records to suggest the existence of any spirit of improvement and other sources tend to substantiate this. The Old Stati-

⁴ SRO CC7/3/81

⁵ The seasonal use of the thatch full of carbon and minerals from the smoke and ash was a standard means of fertilising land. Within an almost closed energy system such means of re-cycling nutrients were all important particularly where lime was not widely used or available or where the livestock numbers were low.

⁶ Defoe, D (1769) *A Tour Through the Whole Island of Great Britain* Vol IV, pp203-4. This Tour was supposedly undertaken in the 1720's but Defoe never visited Scotland at that time. He may have visited in 1712, but the latest date at which he definitely came to Scotland was for the Union of Parliaments in 1707, from Leneman, L (1986) *Living in Atholl 1685-1785*, p14.

stical Account notes that potatoes were not introduced to the area until 1771⁷ although by the time of its writing in 1793 the people of Dull parish subsisted "on them about 9 months in the year; and not a little is employed in feeding cows, horses and swine."⁸ Six years later in a report written about the roads of Meikle Obney the surveyor, William Menzies stated that:

"It is a general custom in Scotland and especially in the Highlands thereof th[a]t when two, three or more tenants are in the same town they have their arable lands in runridge and kaveles and in order to obviate this improper custom Sir John Stewart of Grandtully who is the proprietor of the town and lands of Meikle Obney laid down a plan some years ago that how soon the whole tacks of a town expired He was immediately to employ a surveyor of Land in order to measure and allot each tenant his proportion of Land as contiguous to his farm houses as possible And in measuring the town and lands of Meikle Obney it was thought proper to alter the old road about sixty yards farther west in order to make it run directly in the march between the farms".⁹

In fact, it was really only in that decade that the Grandtully Estates began to undergo much noteworthy improvement. In the Old Statistical Account for Little Dunkeld the minister, John Robertson, reported that:

"Till of late, four horses were yoked in a plough, and for each plough, or ploughgate, there were at least two, and in many instances, four partners. Each tenant's land was interspersed in small ridges with that of his neighbours....About 15 years ago the tenants began to divide the land among themselves into small glebes or lots..."¹⁰

Thus, although Robertson could at the same time describe

⁷ Robertson, J (1793) Parish of Little Dunkeld, OSA Vol 6 (ed) J Sinclair, p365

⁸ Menzies, Archibald (1793) Parish of Dull, OSA op cit, p152

⁹ SRO GD121/37/206/6 dated 1778

¹⁰ Robertson, J (1793) op cit, p363

the enclosures around Murthly Castle as "beautiful and spacious"¹¹, it was only these policy lands which had undergone improvement during the period under study. The tenant farmers had been given little encouragement to improve their land. Clauses contained in a small proportion of tacks suggest only the most rudimentary of specified changes or even maintenance;

"... to inclose with a sufficient feall Dyke and Ditch so as to keep out horses or cows and if he does not then he cannot exact any penalty for any horses or cows that shall leapp in..."¹²,

This is not to suggest that no improvements were occurring but merely that there was no overt 'spirit of improvement'. This relative lack of interest in what was the most fundamental process of change to have been seen in rural Scotland since the dawn of agriculture itself, may simply have been a reflection of the location of the Estates on the Highland edge. Isolation, however, is not in itself a sufficient reason. Having a house in Dundee, gone to university in St Andrews and spending much time in Edinburgh, London and the continent, George and to some extent, John Steuart of Grandtully must have been well aware of the changes occurring in the Lothians,

¹¹ *ibid*, p355

¹² In a tack to James Douglas in Wester Riemore, 15th November 1734. SRO GD121/28/160

Fife, Carse of Gowrie¹³ and indeed, in England. The estates may have been isolated but their proprietors were not. Rather, it seems that as lairds they were simply not interested in farming and clearly felt no great need to increase their income from that source. Being content to leave most of the management of the Estates to their factors there are few references to any of the three lairds, who appear during the period under consideration, taking a personal interest in the way their land was cultivated. This did not extend to all aspects of estate management as they did maintain an interest in their woodlands and in hunting. George, even feeling it necessary to place the following notice in the Caledonian Mercury in 1736:

"That Sir George Steuart of Grantully Baronet, has given strict orders to preserve the Game in his Hills of Grantully, Strathbrain &c. And whoever shall be found hunting thereon, with Guns, Nets or Dogs, shall be prosecuted in terms of the Law."¹⁴

Given the lack of any push towards improvement from the lairds, the functioning of the four estates changed little across the century under study. Therefore, it is possible to examine the basic characteristics of the Estate Group's topography and agricultural economy,

¹³ Changes were slower to come to the Carse being described prior to 1735 as "astonishingly unproductive; being in many places overrun with rushes, disfigured by pools of water, at that time the usual haunt of lapwings; and the whole people subject to the aque." Robertson, J (1794) General View of Agriculture in the Southern Districts of the County of Perth, p11. The Stuarts must, however have been aware of the changes which occurred to that landscape in the subsequent twenty years.

¹⁴ Caledonian Mercury (July 6 1736) No 2537

within the time span delineated, without the added complications of dynamic and rapidly changing farming methods. To a certain extent the topography alone determined the type of farms on the four estates. In broad terms there was a simple arable/pastoral division between Airntully/Murthly on the one hand, and Strathbran/ Grandtully on the other. Information extracted from the rentals and testamentary data demonstrates this dichotomy.

Most previous work has relied on the character of rents being paid to provide some indication of the type of farming in an area. A typical rental payment from the Barony of Grandtully in 1691 comprised:

- £13.18.4 money
- 2 geese
- 2 poultry
- 2 loads of peats¹⁵

whilst one from Airntully consisted of:

- 4 bolles bear
- 3 bolles meall
- 1 boll oats
- £5.1.4¹⁶

That these payments were due for one merkland and one twenty-shilling land respectively is significant here; what is important are the components which make up these two characteristic rental payments. Clearly, Airntully was a grain growing area. Strathbran, on the other hand

¹⁵ SRO GD121/41/223/80

¹⁶ SRO GD121/41/223/8b

cannot be so readily categorised from rentals such as this. Obviously the economy had a strong cash earning capacity but there is no indication of the basis for that earning power in the rentals.

This inherent weakness of rentals as unreliable indicators of crop production has previously been identified¹⁷ (4.2.2). Data from testaments (5.1.1) appear to provide a more reliable record and have thus been employed here to assess the relative importance of crop and livestock production on the four estates. This parallels work by the Whytes which tested that relationship on the five baronies of the Panmure Estates. Their analysis also made use of testamentary data.¹⁸ Using a similar method, the crop production on the four Grandtully Estates was assessed. Testaments which had been drawn up between planting (taken as March for Oats and April for Bere) and harvest were extracted. These recorded the amount of each crop sown and, from the ratios given in the testaments, the expected return on the 'sowing' calculated. Throughout the period the return on both oats and bere was stated as 3:1, with occasional entries which expected 2:1 for oats. Although these returns ratios were largely standardised within areas and sets of documents, they seem, from the available evidence, to

¹⁷ Whyte, I D & K A (1982) Regional and Local Variation in Seventeenth-Century Scottish Farming: A Preliminary Survey of the Evidence of the Commissary Court Testaments, p2

¹⁸ *ibid.*, pp2-4

reflect the actual average crop yields quite accurately. As the equivalent figures found by the Whytes at Panmure were 3:1 and 4:1 for oats and bere respectively it is likely that the productivity of different areas was taken into account.

Having calculated the value of the expected crop yields it was possible to compare them with the value of livestock recorded in the testaments. This led to Figure 4.3 which provides an indication of the importance of crop production relative to the livestock on each estate. From the diagram it is clear that in the lowland estates, Murthly and Airntully, the mean value of grain as a percentage of the combined value is at least 20% higher than on the two highland estates. The estate with the smallest proportion of arable land and the most obvious highland topography, Strathbran, also has the lowest mean grain value and is clearly the most livestock dependent in the group.

Closer inspection allows the apparent anomalies on Figure 4.3 to be explained. The point located at 14% in the Murthly data refers to the farm of Fungorth. Unlike the rest of the estate which lies in the comparatively fertile river valley, Fungorth lies to the north of Dunkeld at about 155m O.D. - some 75 metres higher than the valley bottom. Even today this farm is on difficult land which is rarely put under grain. The lower fields

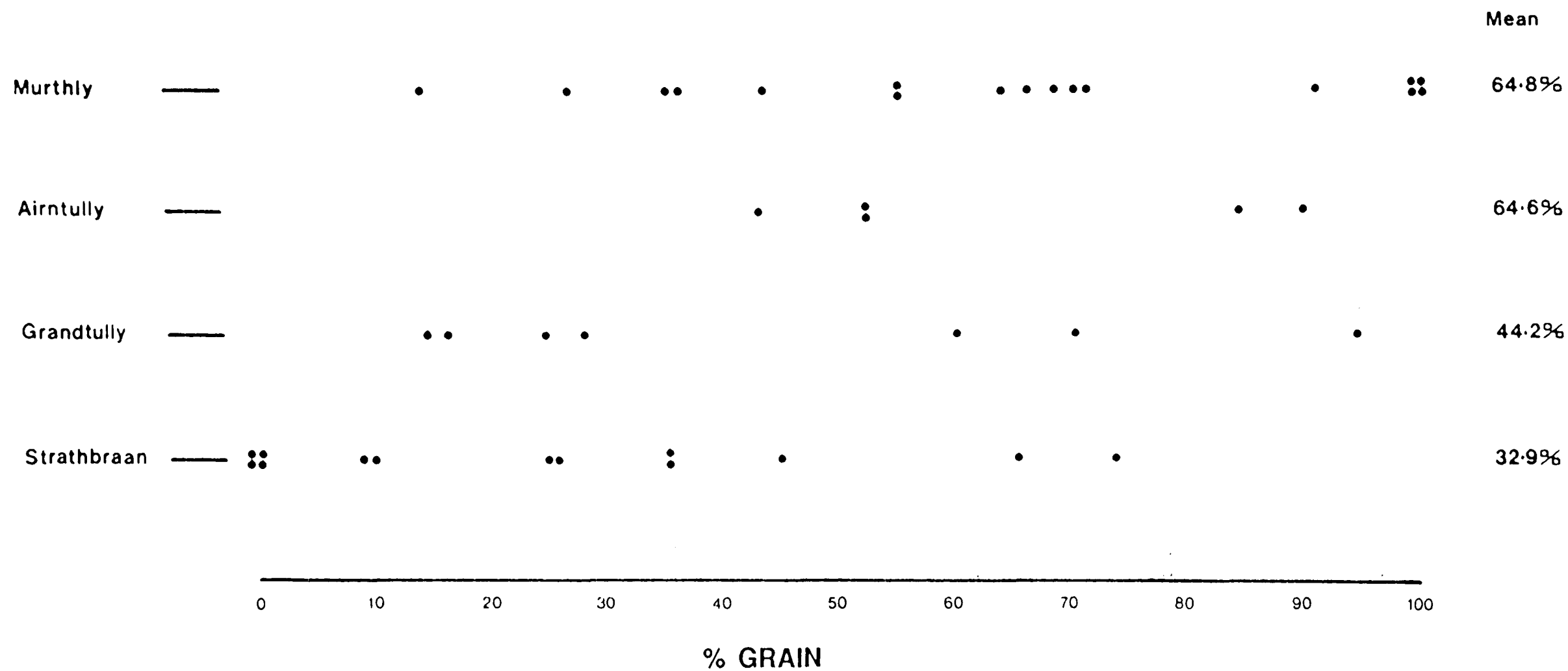


Fig 4.3 Grain as a Percentage of the Combined Value of Crops and Livestock on the Estate Group (each dot represents data from one testamentary inventory)

are wet and frequently the farm suffers under snow which lies for much longer there than it does in the valley below.

In the Grandtully data the point plotted at 94.4% seems incongruous but is explicable. This point refers to the tiny holding of Bruce Croft which lay entirely on the fertile alluvial plain in the upper Tay Valley. In 1717 the tenant of the holding was James Wallace whose entire testamentary inventory comprised:

1 old horse	10 merks
8 bolls of oats estimated to the third corne inde 24 bolls at 7mks per boll	£112
the defuncts heall utensills & domecills with his weaving cloaths all est to	40 merks ¹⁹

The high proportion of oats reflects the fact that the Croft would have been almost wholly arable and intensively cultivated.²⁰ Nevertheless, this example is important in so far as Bruce Croft was part of the arable land on the Grandtully Estate which comprised a higher proportion than that of its southern neighbour, Strathbran. Moreover, it demonstrates the need for as intimate knowledge of the study area as possible, and further emphasizes the importance of using a small study area in this type of research.

¹⁹ SRO CC7/6/2

²⁰ That this testament did not record any oxen for ploughing has rendered this example even more strongly arable than may in fact have been the case. James Wallace may have cultivated using a 'caschrom' or foot-plough but it is more likely that he shared a plough team with neighbours.

The data extracted from the inventories substantiate the pattern of cultivation which would intuitively have been expected, but although these are almost certainly a more reliable test of the character of farming than rentals they do have inherent deficiencies. One of the major problems being that in many cases the testator would have distributed his belongings, including crops and live-stock, to his heirs before death (5.1.2). Rarely are more than two or three cattle beasts recorded in testamentary inventories - most of which relate to the tenant classes and above. Yet there were undoubtedly many more than the number which that would indicate on the upland areas. On the 29th of December 1744,

"....a fire broke out at Trochry in Strathbran, Perthshire in the house of Donald Anderson, while the family were asleep. The poor man first carried out his wife and child, then his mother; but rushing in again to save his infirm aged father, the flames surrounded them, and both perished. Two horses and fifteen cattle perished likewise. 'Tis affirmed that, for some nights before, an uncommon lowing was heard among the cattle. It is suspected to have been occasioned by the maid's dropping a piece of lighted fir-candle (much used in that county) among the straw, she having gone, on the lowing of the cows, to see if any of them appeared like to calve."²¹

None of the testaments examined record cattle in such numbers. Given the time of year and the fact that the cows were in calf, the animals mentioned in this report could not have been part of a drover's herd. (Cattle were commonly pastured in Strathbran by drovers using the

²¹ Scots Magazine (1744), pp572-3

drove road which ran through the valley). Certainly reports such as this suggest that although apparently recording the moveable components of agriculture - seed, harvest, livestock, implements etc - testamentary inventories can only be indicative of their relative importance.

Nevertheless, the findings from the testamentary data do serve to explain the high proportion of cash payments found in the Strathbran rental. Cattle were a cash earning commodity. Sold to drovers either as they passed through the Strath or at the trysts and markets, they were either paid for in cash or by transferable bills of exchange. Sometimes they were paid for in advance by the drovers - they extended credit. This happened in 1730 when Alexander Robertson, maltman in Dungarthill, sold a cow to Patrick Stewart. The deal was complicated by a third party, Patrick's brother, but the use of credit is apparent in Robertson's deposition made in the small claims court:

".....that where I [Alexander Robertson] having sold to Patrick Stewart drover....a cow at ten pounds scotts which I was to have delivered to him and when I went to deliver the said cow, he had went for England, and the said James Stewart [Patrick's brother] having entreated me to deliver to him the s[ai]d cow or the ten pund scotts and he should stand betwixt me and all hazard and free me at the hands of his brother and accordingly I payed him the s[ai]d ten punds which he was to have payed his brother...."²²

²²
SRO CC7/3/46

James failed to pay his brother who then claimed the money from Robertson in front of the Justices of the Peace. Robertson, in turn, was claiming repayment from James Stewart.

Sheep, horses, pigs and goats were also kept on the estates. Only the last ever feature in rentals,²³ whilst the others are, to some extent, recorded in testamentary inventories and appear quite frequently in the small claims record (6.1.3). All of these animals and the crops cultivated, produced a seasonal income for their owners. Of all these commodities cattle, at least in the highland areas, were^{the} most marketable commodity for a cash income with, sometimes, a credit component. The sale of cattle largely depended on the movement of drovers. In the late summer and autumn when the main trysts were held, there would be a significant cash influx to the area. In August 1704 two sub-factors wrote to the Duke of Atholl from Balquhiddy saying,

"There are come no merchants yet for the smal cattell, & we have but little hopes of any mercat worth this year, which we are afraid will make your Grace's rent to come the later in".²⁴

Sometimes the payments came in meal or grain,

"The High-landers are not without considerable quantities of corn, yet have not enough to satisfie their numbers, and therefore yearly come down with their cattle, of which they have plenty, and so traffik with the Low-landers for such proportions of oats and barley as

²³ Pigs occasionally feature in the rental of millers.

²⁴ Leneman, L (1986) Living in Atholl 1685-1785, p29

their families or necessities call for."²⁵

Whether the cattle were sold to drovers, driven south by the owners themselves, sold for cash or kind, the income was, for the most part, confined to the late summer and early autumn. This enabled supplies to be bought in for the winter.

The inevitable use of credit in the seasonal farming year has been mentioned (2.2.2) but the seasonality itself could increase the precarious nature of the individual's income. Not only was he dependent upon his crops or livestock yielding a good income, he was vulnerable to any factor which might reduce or remove that income unexpectedly. Disaster was not palliated by a regular income throughout the year.

The infamy of cattle raiding features time and again in Scottish, and particularly Highland, history. The effects of such theft were felt by the people living on the Grandtully Estates and are recorded throughout the study period. In 1675 Sir Thomas Stuart wrote to his son John saying,

"You may show Glenwrquhie that his men hes stollne tuentie horss from my tennantis and my selff and I will do my best to see give I can geatt ane redress of his tennantis."²⁶

²⁵ Thomas Morer (1689) quoted in Donnachie I (1986) *Economy and Society in the Seventeenth Century in the Highlands*, in The Seventeenth Century in the Highlands Inverness Field Club, p52

²⁶ Fraser, W op cit, Vol I, pcxviii

whilst over a century later an old man's boyhood memories recalled the theft of horses from Thomas McLaggan who,

"....kept in general six black cattle young and old....he also had horses but these were seldom pastured on the hill and after 1745 he had for years no horses as the highland men stole them from him during that year."²⁷

This type of lawlessness was a part of life, but for the individual could be economically disastrous. At such times charity from the laird or a readily available loan or credit could prove the only answer. It was not only in times of dearth that crises could come to the individual family - theft, fire, or the inability to work through injury or illness,²⁸ could all propel people into the credit market. These were times when credit did function as a reponse to liquidity crises, but such need for credit was very different from that imposed by the standard cycle of the farming year. In the former the necessity came through adverse personal circumstances, in the latter, through a time cycle which was universally understood and accepted. As mentioned above, any produce from an agricultural economy has a seasonal characteristic and hence generates a seasonal income. Cattle were one of the most important crops in this respect, flax was another.

²⁷ SRO GD121/85/13/3. Notes on the examination of James Dow in Wester Inchewan, aged 78, who was a witness in a case concerning disputed common pasture.

²⁸ The effects of old-age or long term illness could do quite the reverse by excluding people from the credit market. This is considered in 6.1.2.

4.2.2 The Importance of Linen

The importance of flax in the area is not reflected in the estate records as neither the yarn nor cloth was an integral part of the estate economy, but was sold "to hawkers and others who purchase for the great manufactories".¹ The linen was most commonly sold as spun yarn but some was woven and sold as webs of green cloth by local weavers. Advertisements for linen fairs in the area featured regularly in newspapers - even as far afield as Edinburgh - and were, no doubt, major local events:

"...that the Yearly Old Fair called Saint Colms Fair, holds on the ninth day of June next at Dunkeld. Where is to be sold the best Linnen Cloath of all sorts and where there will be Provision for Merchants and their Horses, at Reasonable Rates."

"These are to give notice to all persons, that the Linnen Cloth Fair of Perth (or St. Johnstoun) will this present year begin upon Wednesday being the Second day of June...and will continue till the 24th as formerly."²

By the beginning of the eighteenth century such fairs were clearly long established in the farming year and by 1793 the parish of Little Dunkeld was itself producing 4,296 stones of flax - all of which was spun by the women of the parish.

Flax was almost certainly the most important cash earning

¹ Robertson, J (1793) Parish of Little Dunkeld, OSA No XL, p367

² Both of these advertisements appeared in the Edinburgh Courant of 1708, nos. 426 & 419 respectively.

commodity in the area, particularly on the lowland estates, but it is difficult to substantiate this assumption with written evidence. Occasionally a document records the linen market as a recognised date when there would be an influx of cash to the rural economy. On 20th June 1700 Robert Adamson a merchant in Dunkeld was claiming in the Commissary Court against John Roy in Dalpowie for an outstanding debt of 22 merks. In the claim he stated,

"That wheras in the month of May last The s[ai]d defender bought and received from me ane meare and faithfully promitted to have payed to me the soume of 22 mks against the 6th June instant being the Cloath mercatt of Perth which he ought to pay and yet refuses without he be compelled."³

As shown above, rentals only record the money or goods used to pay the rent not the actual source of the cash. However, letters written by the Duke of Atholl in the early years of the eighteenth century go some way to verifying the assumption that linen was the most important earner: referring to an outstanding debt he wrote in June 1705 that "...I believe just now that there is not 4000 merks in all Perthshire, But the Linnen Cloth mercat being next week makes me in great expectations there will be some gott then". Another reference, five years later, is made to the fact that "the rents below the wood are not payd till the Clothmercat".⁴ The OSA report, written

³ SRO CC7/3/16(1)

⁴ These and other similar extracts from the Atholl correspondence are quoted in Leneman, L (1986) *Living in Atholl 1685-1785*, p29-30.

some eighty years later, for the parish of Dull suggests that this general situation had changed little throughout the century:

"In general, all the farmers here raise and spin what flax is sufficient to pay their money rents, besides all their other small accounts".⁵

In the Grandtully archives reference to flax and linen are extremely sparse although the same situation undoubtedly prevailed. Only one significant reference was found in the estate records; a letter dated 13th April 1767, in which Charles MacGlashan, then factor to Sir John Steuart, wrote,

"I beg youll let me know in course when I am to uplift the rents if it be at the term in full time that they were aquanted therof, as they are pleading strongly that you would give them a respite till after midsummer market when they dispose of their Linnen Cloath...."⁶

The only other reference traced which relates directly to the Estates comes from a poem written about the Braes of Colrae on Murthly Estate. Unfortunately the manuscript is not dated but the palaeography suggests it was written around 1750 - whether the poem itself predates this copy is not known. The tone of the verses is very much that of times remembered, of halcyon days, and has little to commend them poetically. However, although they undoubtedly exaggerate the case, the significance of flax is clearly stated:

⁵ Menzies, A (1793) OSA No XX, Parish of Dull, p152

⁶ In a letter to Mr James Stewart who was acting as agent for Sir John Steuart of Grandtully. SRO GD121/68/410A/53

...the rent was easy paid these days
by loom and spinning wheel
when women got their dozen off
they no more care did feel.

...how pleasing then to see the burn
the curling stream that ran
where women bleach'd their linen white
soon as the heat began

...the spinning wheel and 3 yeard reel
was constant the employ
when children got their 12 cuts off
the evening spent in joy.⁷

Direct references to the growing and processing of flax do appear in the testamentary record. Of 101 extant testaments for the period 19 contain items which relate to linen or lintseed. As many inventories would have included spinning wheels, unspun yarn etc in the category of household plenishings this proportion is surprisingsly high. In addition, more than a fifth of the inventories were made during the summer months, ie after the spun yarn or woven fabric had been sold. References to linen also appear in the small claims process data. Every step of production features; from lintseed to woven cloth. A claim made by John Cameron, a merchant in Dunkeld, records his successful attempt to recover the price of flax which he had "sold and delivered" to 25 separate purchasers between Martinmas 1753 and Candlemas 1754.⁸ This figure only represents those of his customers who lived on the Grandtully Estate and those who had not

⁷
SRO GD121/67/408A/176
⁸
SRO CC7/3/71

defrayed their debt - all of which had been incurred within a three month period. It must, therefore, account for a very small portion of his flax buying customers. Certainly, along the Tay, in this context particularly on Murthly Estate,

"linen manufacture was the specialised occupation of tenants who combined it with husbandry, and either bought flax from importing merchants or grew it themselves".⁹

The use of flax and linen in the farming economy epitomises the type of credit outlined at the end of the previous section. Lairds did not expect to receive rental payments until after the cloth markets - that was one very specific sub-set of the seasonal credit market - but undoubtedly the same was true for merchants, craftsmen or indeed anyone who required payment in cash.

⁹ Smout, T C (1969) A History of the Scottish People 1560-1830. p119

4.2.3 The Local Markets

Seventeenth- and eighteenth-century markets lay at the hub of rural life. They were meeting places, trading places, places of spectacle and gaiety. The market and local inn formed the focus for often widely dispersed communities. Whether they are portrayed in verse or in paint, contemporaries illustrate their fairs and markets as scenes of apparent confusion, sometimes close to riot. Paintings and drawings show animals running loose, children playing with a fascinating range of toys and all the necessities of life for sale (Figs 4.4, 4.5 & 4.6¹). The images are of energy, sound and colour yet it was within that context that bargains were struck, goods were bartered, animals bought and credit extended. Lines from a ballad make the point;

"Here Orange Kate her tent does pitch
Wi creels there Gingerbread Sandie,
Here Clear e'ed Mause, a slaverie bitch,
Cries 'Buy fine Lunnon candie';
Loch Leven Jock roars oot 'Eel skins
Here for your pennies orra',
While Horner Madge skirls 'Horn spoons
Come better buy than borrow
On ony day' ".²

The dry data which are extracted from documents today rarely offer these sorts of images to the researcher.

¹ Walter Geikie, who was born in 1795, specialised in drawing scenes of markets and domestic life. His drawings reproduced here are from 'Geikie's Etchings' (1841), nos. 18, 29, 39 & 49.

² Dunfermline District Libraries (1978) *Everyday Life in Dunfermline in the Late Eighteenth-Century*, p3



Fig 4.4 Scene at All Hallow's Fair by Walter Geikie



"Dinna mak it ever lang"

Fig 4.5 Peasants having their hair cut, by Walter Geikie



The Shoe Stand

Fig 4.6 The Shoe Stand by Walter Geikie

Only occasionally do they break through the legal terminology and standardized structure of the written documents.

In 1695 James Syme in Craigiltoch was the pursuer in a small claims case in the Dunkeld Commissary Court.³ The defender, one Thomas Boyd in Dalbeathie on Murthly Estate was said to owe Syme the sum of 16 merks for a young stott which he had bought from him at the Martinmas market in Dunkeld. In the vast majority of claims only those stark points would be recorded (5.2.2) but because Boyd put forward a defence, some flesh is put onto these skeletal facts. His defence read as follows;

"Alwayes deneying the pryce of the stott claimed. It is offered to be proven that the pactione⁴ was conditional so that if the beast was anywayes faultie either by desease tricks or gawds⁵ he should receiv him back and the storr being both a pusher with hornes thereby he wounds and hurts the other beasts and lykewayes a dyke leapper which so offends my nighbours that he cannewayes be usefull which faults I endeavouring to curb did keip him a tyme thinking he would amend butt seing noe appearance I offered him back att Lambass last."

Syme's response was to state that,

"Granting there hade bein any such conditional pactione as is alleadged as there was not. Yet as the def[ende]^r says he keepped the stott till Lambas w[i]^t[h]out offereing him back being thrie quarters of ane year after the pactione and even halfe ane year after the terme of payment. The same can noeways be sustained."

Syme won his case but more importantly here, it left a record which not only gives us information about the

³ SRO CC7/3/11(1)

⁴ An informal agreement which was not legally binding.

⁵ Pranks

price of a young stott, it records how a credit agreement was actually reached (Fig 4.7). The 'pactione' or informal agreement was undoubtedly a standard means of agreeing a deal. Payment of such debts was commonly not expected immediately but a date was agreed at the time of the transaction; one or two quarters of the year were frequently the accepted period for payment to be deferred although the evidence suggests that the important date was the term at the end of each quarter not the date of incurrence. In other words if a bargain was struck halfway between terms, payment might still be due at the following term-day.

In addition, the above claim indicates that even in 1695 some sort of dyking - perhaps stone walls but possibly ditches with a bank or hedge - were being employed on Murthly Estate to separate livestock from crops. The earliest reference found in the estate records to such a practice dates from some thirty years later.

Such debt/credit transactions were the stuff of everyday life and the fabric of the peasant economy. The circuit of local markets provided a sequence of centres in which the mechanics of that economy could operate.

The focus of economic activity for the Grandtully Estate Group was certainly the officially recognised market centre of Dunkeld. Estimated in 1692 to have an annual turnover of £12,000 Scots at its periodic fairs and



Fig 4.7 Settling for Crummie by Walter Geikie
(A crummie was a cow with horns)

markets,⁶ about thirty years later Defoe was still able to describe Dunkeld as "...the chief Market town of the Highlands" which, he said, "appeared to be a very neat and agreeable place".⁷ A rather grandiose claim, but certainly in the immediate area Dunkeld retained its commercial dominance throughout the study period. A number of weekly markets and at least eight annual fairs were held there.⁸

Other markets were active in the region. Recognised officially in a complaint in the 1692 report⁹ were Auchtergaven, Meikleour, Blairgowrie, Kenmore and Logierait but other unofficial centres were also functioning; particularly Methven, Redgorton, Moulin and Caputh (Fig 4.8).

Here the significance of these various centres does not lie in their official turnover but in their ability to pull people to their fairs and markets. The transactions under examination here are largely those of direct exchange between two individuals in the private or 'spot market' (6.1.1). These transactions took place wherever people met with goods or livestock to sell - most frequ-

⁶ Whyte, I D (1979) The Growth of Periodic Market Centres in Scotland, 1600-1707. SGM No 95, p23

⁷ Defoe, D (1769) A Tour through the Whole Island of Great Britain Vol IV, p202. Dunkeld was almost certainly more attractive than other settlements of a similar size as it had been rebuilt after being burned in 1689 when only three houses were left standing.

⁸ Stewart, E (1926) Dunkeld: An Ancient City, p86

⁹ Marwick, J D (ed) (1880) The Records of the Convention of the Royal Burghs Vol IV, p132 & 139

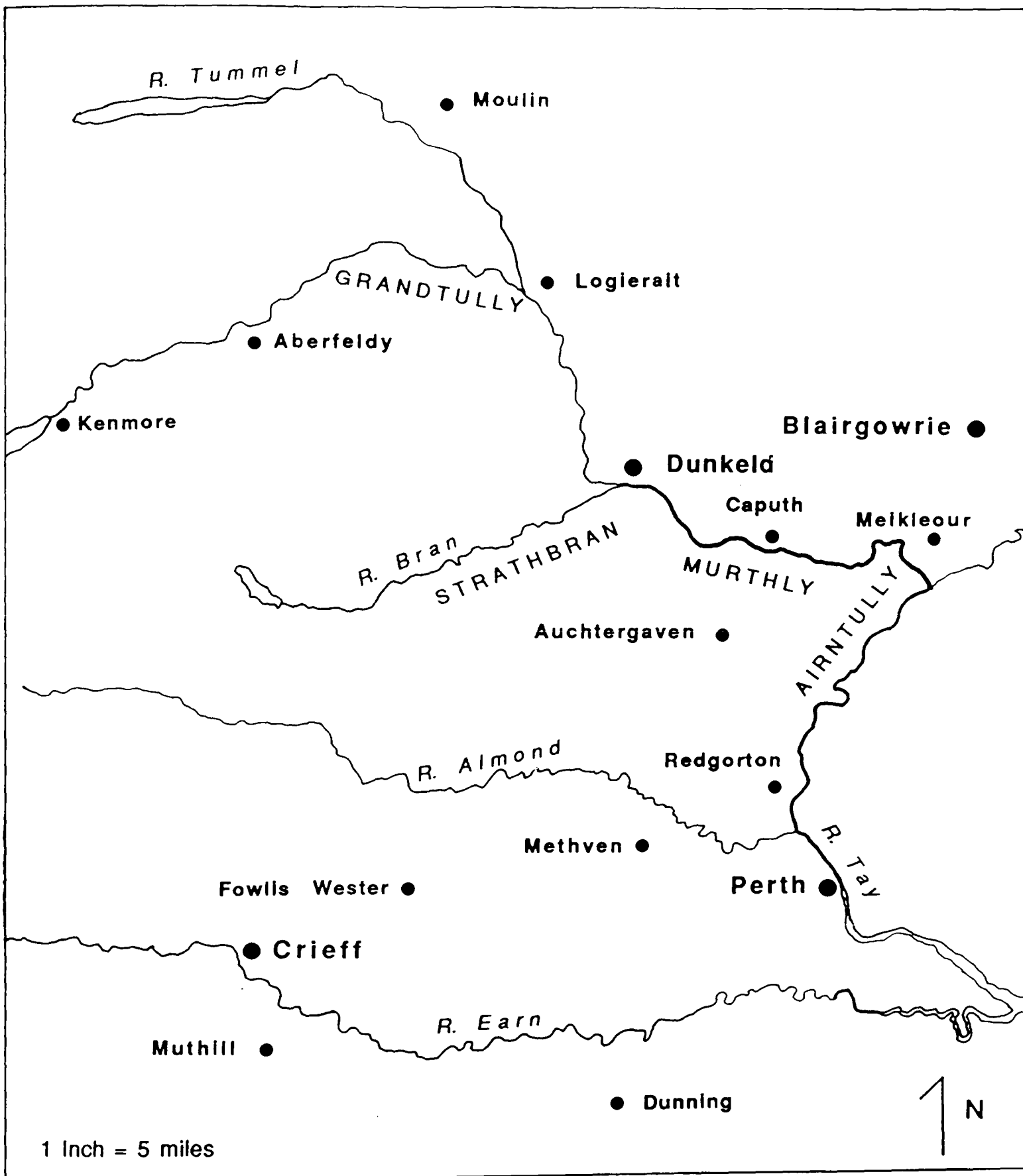


Fig 4.8 Market Centres in the Area (recorded use by Estate Group Tenants)

ently in the local markets. The importance of these centres as places of 'private sales' - transactions which did not include a middleman¹⁰ or sometimes even stallholder or craftsman selling his wares - cannot be overstressed. An entire network of communication and, therefore, the possibility of credit, was built up within the geographical structure which they provided. One example clearly makes the point. In 1750 Alexander Innes of Kirkland brought a claim against Alexander Craigie in Caputh, in the Dunkeld Commissary Court. His claim stated that,

"five weeks ago at the last Mercat of Dunning I sold the defendant two cows for £33 Scots of price which he was to have carried of from my possession the wednesday thereafter and pay the price of which cows I had then att said mercat. Like as upon the second day aftersaid therat being the Mercat of Methven the s[ai]d defender bought from me 4 other cows at £18 Scotts each of price which he was to carry of from me before the Mercat of Ochtergaven last past and pay me the price..."

The claim continues, to say that the defender did not "carry of the cows or pay though he promised particularly the Saturday and Monday before the Martinmas Mercat".¹¹

That a person should visit four different markets within five weeks seems not to have been unexceptional and is unremarkable in a time when communication was almost entirely dependant on 'word of mouth'. That the markets lay (by straight-line measure) 19, 11, 6 and 3 miles from

¹⁰ In theory all transactions which involved a middleman could only legally take place in an authorized market: Whyte, I D Early-Modern Scotland: Continuity and Change, in G Whittington & I D Whyte (eds) (1983) An Historical Geography of Scotland, p133

¹¹ SRO CC7/3/66

the defendant's home¹² in Caputh is, however, indicative of the large expenditure of time and energy used in trade; in buying, selling and simply communicating.

"The size of market areas was limited by the difficulties of overland transport and access to navigable water. Few land journeys could be more than 20km a day, and most were probably nearer 10km."¹³

This was just as true for the small rural market centres as for the larger burgh markets. Merely making the return journeys described in the above claim would take most of a day or more: transporting produce or herding livestock could substantially extend that travelling time. Nevertheless, the market network was the structural framework which enabled a large portion of the credit system to exist - a debt incurred at one market could be defrayed at another on a specified date agreed by both parties, be it a term day or other date in the market circuit.

Within that framework, certain centres acted as the focus for each locality. In this case Dunkeld held the core position, although the hinterland of other important places such as Crieff and Perth obviously overlapped with or even encompassed that of Dunkeld and the other local centres. Of the litigants in 732 small claims cases, in each of which at least one lived on the Grandtully Estates, 211 resided in Dunkeld. In other words almost

¹² It was not possible to establish in which of the several Kirkland's in the area the pursuer lived.

¹³ Adams, I H (1978) The Making of Urban Scotland, p51

29% of the Grandtully debt/credit transactions were agreed with someone from Dunkeld. For each of the estates the proportion of such claims was:

Grandtully	29%
Strathbran	28%
Murthly	35%
Airntully	4% ¹⁴

Given that these figures do not reflect the actual amount of business done in Dunkeld which involved individuals from the four estates - it excludes all deals made at the markets there which only involved individuals from outside the town - it must substantially underestimate the proportion of business which was transacted there involving people from the Estate Group. Dunkeld's dominance is further suggested by the importance which was given to some of its markets, particularly St Colm's Fair which was advertised in the Edinburgh newspapers of the day (4.2.2), and the Martinmas fair which began,

"yeerlie apoun Mounday efter Martinmas Day and thereafter to continowe for the space of eight dayes with the haill jurisdiction, freedomes, tholl and customes of the samene."¹⁵

Interestingly, the pull to Perth seems to have been very weak . It featured only 7 times in all the transactions examined. This may well be a reflection of the fact that credit would have been extended less frequently by the

¹⁴ The commercial and social isolation of Airntully is discussed elsewhere - 5.2.2 & 6.1.2.

¹⁵ Stewart, E (1926) Dunkeld: An Ancient City, p86

merchants of Perth - to whom the people of the Grandtully Estates would not have been familiar - than by the merchants and tradesmen in Dunkeld. Thus, there is bound to be a paucity of evidence concerning transactions which took place in the larger centres. Either they simply did not occur, direct exchange was immediate, payment being made in coin or kind, or litigation was taken to a higher court (5.2.2). In addition, people from the Estates were more likely to meet regularly at the smaller local markets than in Perth or Crieff. The latter would usually be visited to attend the larger more specialised markets or trysts.

The function of markets as places of contact for people and goods of all descriptions lay at the heart of everyday life. According to the rhythm and cycle of the weekly markets and annual fairs, each little centre inflated and emptied by turns.¹⁶ Provisions, livestock, labour and craft produce were all available for sale almost always with the option of credit.

¹⁶ Braudel, F (1979) *The Structures of Everyday Life*, p503

Chapter 5: Sources for Study

5.1: Testaments

5.1.1 Testaments and the Commissary Courts

The importance of Testaments has long been recognised by Scotland's legislature:

"It is leasum to all fremen, that ar not auchtand greit debtis to ony uther, to mak ane just and reasonabill testament in time of seiknes, and dispone upon thair movabill gudis and geir..."¹

The basic principle of a testament, constituting a writing or decree in which an executor is appointed to administer the moveable estate after the death of the testator,² has long remained unchanged. The term 'Testament' was used in two senses. First, to mean the 'latter will' of the dead person and second, it referred to the document confirmed by the local commissary court.³ It is in the latter sense that the term is used in this context.

Usually an executor was appointed by the testator in which case the decree was known as a *Testament testamenter* and the executor as *-nominate*. If the executor had to be appointed by decree of court then the testament was registered as *dative*. Almost invariably executors were the nearest of kin although non-relatives were appointed when none was surviving or a family dispute had occurred:

¹ McNeill, P G B (ed) (1962) *The Practicks of Sir James Balfour of Pittendreich* (1754), Vol 1, p216, C.I.

² Erskine, J (1773) *Institute of the Law of Scotland*, iii 9, 5

³ Gouldesbrough, P (1985) *Formulary of Old Scots Legal Documents*, p15

one such instance is recorded in the testament of Thomas Douglas who died in 1744. His appointed executor was one Joseph Gibson, the son of Margaret Young who had cared for Douglas during his illness. It is specified in the testament that not only is Gibson to be executor but he and his mother are to receive the entire personalty, Douglas's children being 'debarred and excluded'.⁴

It was also possible for a creditor to have himself appointed as 'executor creditor' as a means of recovering unpaid debts. This was effectively a form of diligence which reduced the need for further actions at law by the creditor(s) against the estate. One executor creditor could be appointed to act on his own behalf and that of any others: having died in debt to seven individuals, Joseph McIldonich's estate was administered by 'Walter Stewart in Tombain for himself and behoof of the other creditors'.⁵

Testaments were lodged with and confirmed by the Commissary Court of each of Scotland's thirteen dioceses. These courts originated "in the early ages of Christianity, from the confidence reposed in the integrity and abilities of the clergy"⁶ and from the fundamental fact that they could write. Indeed, prior to the Reformation

⁴ SRO CC7/6/5

⁵ SRO CC7/6/5/p437

⁶ Robertson, J (1799) Agriculture in the County of Perth, p47

the church held wide-ranging civil jurisdiction through the bishop's or constitorial courts, and took every opportunity to extend these powers. Ultimately these included the confirmation of testaments, the administration of intestate moveable estates, actions relating to marriage, annulment and legitimacy, and actions for slander. Thus, although the jurisdiction of these ecclesiastical courts was extirpated in 1560, the same basic framework was retained for the new commissaries when they were^{first} appointed in 1563-4. The competence of these courts was essentially the same as those which had gone before; including, of significance here, both the registration and confirmation of testaments and jurisdiction over actions for £40 (Scots) or less (5.1.2 & 5.2.1).

In 1564 a distinction was drawn between major and minor testaments, ie the 'dead's part'⁷ was more or less than £50 Scots. It was proposed that only the latter should be confirmed locally whilst all major testaments were to be registered and confirmed in Edinburgh. The practice went largely unobserved. Although the Edinburgh Commissary court had received exclusive jurisdiction over various types of action, particularly those relating to

⁷ The 'dead's part' comprised that portion of the estate which was legally deemed to have belonged to the deceased person; if there was no surviving spouse and no issue then the 'dead's part' was the entire estate. A spouse or children were, however, allowed 1/3 each (any children sharing one third). Thus, in many cases the 'dead's part' comprised 1/3 of the moveable estate.

matrimonial causes, it would have been highly impractical to have registered all testaments there. Convenience was presumably the motivating factor behind the non-centralisation of registration. By the seventeenth-century it is exceptional to find testaments for which the place of death did not determine the place of confirmation.

The testaments themselves were normally written by local Notaries Public although Winifred Coutts found the following range in her survey of 466 testaments from the Dumfries register:

Notaries Public	231	Writers	7
Readers	5	Writer & Minister	2
Preacher	1	School Master or a	
Ministers	180	Minister	1
Testator	4	Baillie	1
Testator & Notary Public	4	Not stated	17 ⁸
Testator & Minister	4		
Notary Public & Minister	6		
Sheriff's Officer & Notary	1		
Servants	2		

Despite this range of potential writers the form of testaments rarely varies from the established norm (5.1.2).

The structure and workings of the court to which they were submitted are less well known. Of all Scotland's Courts those of the Commissariots are amongst the least well researched and documented^{8a}. Dunkeld is no different from

⁸ Coutts, W K (1982) Social and Economic History of the Commissariat of Dumfries from 1600-1665 as disclosed by the Registers of Testaments, p3

^{8a} Few authors have used the Commissariat Records but the most prominent among those who have done so is M H B Sanderson in "The Edinburgh Merchants in Society, 1570-1603: The Evidence of their Testaments", in Cowan, I B & Shaw D (eds) (1983) Renaissance and Reformation, and also in her own book, "Mary Stewart's People" (1987)

the others. It is known that the court was originally held in the Bishop's Castle but was later moved to the consistory, in the basement of the North-West tower of the Cathedral. A list of officials; Commissaries, Commissaries-Depute, Commissary Clerks, Commissary Clerks Depute and Procurator Fiscals is extant,⁹ biographical material is available about a number of the Commissaries - most notably Thomas Bisset who died in 1788.¹⁰ However, little is known about the actual workings of the court beyond what is offered by the surviving records themselves. How thoroughly testament contents were checked and how accurate was the valuation of goods can only be surmised (5.1.2). That the basic structure and treatment of testaments was broadly similar throughout the country is apparent from the documents themselves, but local internal idiosyncrasies are inevitable.

⁹ Hunter J C, (1918) Diocese of Dunkeld 1660-1689 Vol I, pp322-324

¹⁰ Stewart, E (1926) Dunkeld, An Ancient City, p83 and Leneman, L (1986) Living in Atholl 1685-1785, many references particularly, pp219-226

5.1.2: Testaments as a Source

The Testament is one of the most important sources available for the study of social history, allowing us as it does to "peer into pantries and portfolios".¹ Basically testaments are the equivalent of English probate inventories and being legal documents provide an unusually standardised form of data.

The Testament provides biographical information; the individual's status, type of employment, place of residence, the names of immediate family and, in the inventory, an outline of material wealth and financial status. The following is a typical, if rather shorter than average testament:

The testament dative and inventar of ye Guids gear and debts of umq[ui]¹¹ Jonet Grieve in easter Inchshewin ye tyme of hir deceas whilk wes in the moneth of Apryll 1646 w[i]^t[h]in ye Parochine of Litill dunkeld She[rri]fdome and Comissariot of Perth faithfullie made and given up be margaret logie hir onlie law[fu]¹¹ Daughter and James miller in Inchshewin hir spous exe[cu]^t[o]r Datives decernes and confirms t[hat] the s[ai]d Defunct be d[eceas]^t by Mr Thomas Henderson Comissar of Perth upon ye day and daitt of [blank] as ane Act made y[e]^r[e] Anent property.

Inventar

In the first it is givene up that ye s[ai]d Jonet Greive being an aged woman of thrie scour fourteine yeres haid no Guids nor Gear except the particulars following to witt 6 yewes pryce of the perte xl s Inde xii lib Item vi lambes pryce of the perte xiii s iiii

¹ Lindert, P H (1981) An Algorithm for Probate Sampling, Journal of Interdisciplinary History XI:4, p649

d Inde iiii lib Item ane old litle broken kist
ane old plaid ane wylane and bodyes and sleves
with iiii lib.

Suma of ye Inventar xxiii lib vi s viii d

Confirmatione

Mr Thomas Hendirson of Auchindinnie Comissar²

Despite its brevity even this document provides outline information about the testator within its two cursive paragraphs. In this case no debts are recorded. (The recording of testamentary debts is discussed below (5.1.3)).

However, whilst the testament offers what is apparently a quite remarkable amount of information there are limitations and drawbacks to the use of this source. Before the data are even considered it must be borne in mind that a person may have distributed belongings and money amongst family and friends prior to his death and such items will, therefore, not appear in the inventory. Also, 'heirship goods' were omitted: these were the best of everything - the stock, household items etc which were claimed by the heir from the moveable estate to ensure that he did not inherit land without stock or a house bereft of furniture.³ As they record only the moveable

² SRO GD121/66/407/A/38. As with all testaments of this period the Roman numerals can pose problems both in terms of the palaeography and arithmetic and are notorious for errors in the summations. This is more of an irritant than a barrier to accuracy.

³ Shaw, F J (1980) The Northern and Western Islands of Scotland: Their Economy and Society in the Seventeenth Century, p11

wealth, testaments tell us nothing about heritable property - the land and buildings - but where the testator had not owned property this and the issue of heirship is not relevant and thus impinges hardly at all on this study.

The remainder of the moveables were recorded in varying amounts of detail. In general, items relating to agriculture; stock, seed, implements etc are rather better recorded than personal belongings and household goods. All too often the phrases 'utencill and domicill', 'household plenishings', 'outsight and insight plenishings' and 'abulziements of his body' obscure otherwise fascinating detail. Of the testaments examined here only 21% itemised household goods.

Despite these shortcomings, the testament offers a source which not only provides information about a large segment of society but does so in a standardised and apparently reliable form. Nevertheless, the reliability and accuracy of the data must be questioned, particularly as the inventory of 'goods and gear' and 'debts restand owand be and to' were almost always compiled by someone closely related or otherwise connected with the deceased. It would usually be in the interest of that person to keep the value of the estate down and consequently the duty or 'quot' to a minimum. This duty, normally 5%, was levied on the net value of the free gear or 'dead's part' after

all debts were paid. There were some exceptions: after 1669 executor-creditors (5.1.1), relicts confirming for their provisions, and persons whose heritable and moveable estate did not exceed £40 Scots.⁴

In some areas, such as the Western Isles, the Commissary was highly peripatetic and had little opportunity to check on the executor's inventory thus enabling assets to be undervalued and liabilities overstated.⁵ However, the Dunkeld Commissary spent substantial periods, in and sometimes even living in, the locality which must have allowed his officials to oversee or check many inventories, although the proportion scrutinised cannot be known.

⁴ APS 1669 VIII, c40 p577

⁵ Shaw, F J op cit. p11

5.1.3 Recording Debts in Testaments

Recording the outstanding debts and credit holdings of a testator was the responsibility of the executor. Debts, like other items in the inventory, would usually have been accurately recorded; if the executor omitted or understated the value of an item, no action could be taken at law to pursue it. Similarly, if an outstanding debt due to the estate was not recorded or was undervalued, it could not be pursued at law for an amount above that entered in the confirmed testament. Likewise, it was to the advantage of the executor to record unpaid debts owing out of the estate as these reduced the total value and hence the payable duty. However, in cases of sudden and unexpected death, executors may have had difficulty in establishing all of a testator's unconcluded agreements. In a time when most transactions were verbal this situation must have arisen. However, as the executor legally had three months,¹ and in reality often much longer, to submit and have a testament confirmed, it can be assumed that the vast majority of outstanding debts had been identified and agreed by both parties.

For those debts identified, the appointment of one or more cautioners by the executor was a further guarantee

¹ Prior to 1610 the period for confirmation was six months after which it was amended to 'within three monethis efter the deceis of the defunct at the farthest'. From McNeill, P (ed) (1962) *The Practicks of Sir J Balfour of Pittendreich*, Stair Soc Vol 21, sect IX

of accuracy. Standing surety that the estate would pay debts and distribute goods to those legally entitled to them, it was in the cautioner's interest to ensure that the internal detail of the inventory was correct. Usually cautioners were merchants or 'men of standing' in the community. In the Grandtully testaments the most frequent occupations recorded for cautioners were: merchant, maltman, chandler and brewer. Birlaymen and large tenants also often filled the role.

Finally, the Commissary himself was bound to ensure that the content of inventories was realistically reported, "though he might overlook small underestimates and omissions, was unlikely to have allowed the general level of duty to become unrealistically low".² The nature of many of the debts recorded in fact rendered this task relatively easy. Rents, land duties, teinds, funeral expenses and outstanding executry payments could all be readily verified by the Commissary and his officers and formed in this study 15% of the total number of debts recorded.

Therefore, assuming that the basic data were largely accurate what form did they take? In almost every case examined, the debtors and creditors of an estate were named and their location specified. It was, however, rare to find their profession or social status listed.

² Shaw, F J (1980) The Northern and Western Islands of Scotland, p13

Of the debts themselves, the value was almost invariably stated but in just under a quarter of cases no reason was given for its incurrence - as discussed below (6.1.2) it can be assumed that the majority of these unspecified debts were either unsecured loans or the result of deferred payment on a purchase.

For the purposes of this study, the limiting factor in testamentary data is certainly the lack of detail concerning social status. Certainly the majority of testators came from the tenant or craft classes, but although some were identified from other groups (5.2.1), most of them remained frustratingly elusive. Those testators who had come from the higher echelons of society were identified - ministers, tacksmen, wadsetters, portioners - but without details of the others the usefulness of the data was severely limited. Judging from other work, particularly that of the Whytes on testaments from the Panmure estates,³ and Winifred Coutts on the Dumfries Commissariat,⁴ this trait is not universal in Scottish testaments but is certainly a characteristic of those written in the Dunkeld commissariat.

³ Whyte, I D & K A (1988) Debt and Credit, Poverty and Prosperity in a Seventeenth-century Scottish Rural Community, in Mitchison, R & Roebuck, P (eds) Economy & Society in Scotland and Ireland 1500-1939

⁴ Coutts, W K (1982) *op cit*, particularly chapter 4

5.2: Commissary Court Small Claims Processes

5.2.1: Small Claims Processes and the Estate-Index

The majority of the data used in this study of indebtedness was extracted from the small claims processes which, like the testamentary material, fell within the jurisdiction of the Dunkeld Commissary Court. The small claims process or writ was the means by which an action or prosecution was brought against debtors in the Commissary Court. In theory these claims were limited to £40 Scots or less but in practice much larger figures were occasionally dealt with; 4.1% of the recorded claims fell into this category. These ranged from an action by the laird, Sir John Steuart of Grandtully for an outstanding rent payment of £41, to a very large claim also made by the laird, against two of his tenants. He had sold "all and haill the growing timber bark and bough upon the barony of Grandtully"¹ to Gilbert Greig and Thomas Rattray for the period 1701 to 1713. The contract specified that 1,250 mks would be paid to him each year. In fact no money seems to have changed hands and by 1715 both of the contracting tenants had died leaving their respective sons, Thomas Greig and John Rattray, to face the laird's claim of £10,090 plus 250 mks of expenses. This is by far the most substantial claim made during the period 1687-1765. Normally such a

¹ SRO CC7/3/30

contract between landowner and tenant would have been dealt with in the baron court (5.2.2). However, because the claim was so large the defendants may have requested that it be heard in a court unconnected with the estate. The potential for perceived and actual bias were obviously high in what was, after all, the laird's own court. The superior reputation for impartial justice in the commissary courts² must have encouraged litigants to utilise them. Although in theory the competence of the commissary was limited to hearing claims of less than £40, this limit could quite legally be disregarded if the defendant had no objection to the case being heard in his court.

The second largest claim noted also relates to this case. Made 5 years later, in 1720, the two defenders were still trying to raise the money to pay John Steuart of Grandtully. In this subsequent action two merchants in Dunkeld, to whom the original tenants had sub-contracted a portion of the stated timber harvest, over an unspecified period, were being sued by the defendants of the original case for £1,345.6.8. Relating as it did to individuals outside the estates, the barony court was not competent to adjudge such a claim. As it is likely that other such actions were taken by Greig and Rattray it would have been logical for the whole sequence of

² Pryde, G S (1958) *The Burgh Courts and Allied Jurisdictions*, in *An Introduction to Scottish Legal History*, The Stair Society, Chap XXIX, p387

litigation to come before the commissary. (Without examining all the extant processes it is impossible to trace such series of inter-related claims. See below).

The total claims for more than £40 fell into the following categories:

Rent arrears	£105.01.04
" "	41.00.00
Duty "	80.18.00
" "	50.18.08
Teinds "	839.06.08
Executry cases	100.00.00
" "	66.13.04
Loan	398.13.04
"	360.00.00
"	47.00.00
Loan by Bill	100.00.00
" "	88.16.08
" "	65.00.00
" "	60.00.00
" "	56.00.00
" "	45.00.00
Loan by Bond	666.13.04
" "	133.06.08
" "	66.13.04
Sale of timber	10,090.00.00
" "	1,345.00.00
" of livestock/cloth	74.08.00
" of mare & staig	60.00.00
Defamation	240.00.00
Slander	50.00.00
Theft	133.06.08
"	46.16.00
Child maintenance	220.00.00
Crop destruction	66.13.04

Clearly the majority of these high claims fall within the category of official dues - rents, duty and teinds - or

they concern loans made formally in writing.

Information from the small claims process is similar to testamentary material in so far as it is a legal document and, therefore, provides data which are organised within a formal, structured and consistent framework. A process may contain one or more claims made by one or more pursuers (creditors) against one or more defenders (debtors). It is, however, comparatively rare to find more than one pursuer or defender in a claim. From all the estates over the complete study period 65 claims were pursued by more than one person, only two of those involved more than two plaintiffs, and neither of these was a straightforward debt transaction; one was an executry matter, the other a slander action. Of the remainder, two processes accounted for 46 of these claims. The first, from 1735, was brought by Charles Stewart of Hillhead of Fungarth and William Cochrane of the Mill of Mucklarie. These men held rights to the timber harvest from some of the woods on Murthly estate; the 23 claims are all for outstanding payments on bolls³ of bark, timber and hags⁴ sold in the preceding 3 years.⁵ The second process dates from 1765 and also contains 23 claims. These were brought by Donald MacFarlane, a life-rent tenant in Little Trochry, and

³ The Boll was a dry measure of weight or capacity which varied according to commodity and locality.

⁴ Portions of standing wood marked out for felling.

⁵ SRO CC7/3/51(1)

Alexander McDuff in Parks of Strathbran. As managers appointed to carry out the repairs to the kirk of Logyalloch they are claiming previously promised contributions to the repair fund.⁶ Both these processes are atypical of the general run of actions brought in front of the commissary.

Multiple defenders appeared on 37 occasions. Again the vast majority involved two people. 34 cases were pursued by someone on behalf of the original creditor - most frequently a widow on behalf of her dead husband or an executor on behalf of a testator or his next of kin.

In every case the name and place of residence of the participants is given, sometimes with their status or profession. The reason for, and value of each claim is specified and, in some, the verdict of the commissary court given. The format of the claims against debtors is discussed in detail in the following section (5.2.2).

The inventory of Warrants of Decreet and Processes records that 9,701 extracted and 3,110 unextracted⁷ processes came before the Commissary of Dunkeld between 1680 and 1765. A sample of 2,932 of the unextracted processes, taken across this period, indicated that many

⁶ SRO CC7/3/81

⁷ Extraction of a process involved the implementation of the final judgement - a full explanation of this is given at the beginning of 5.2.2.

of these processes contain multiple claims - an average of 3.85 per process. Although this can only provide a very rough guide, these figures suggest that around 50,000 claims were made from the area of the Commissariat⁸ in that 85 year period - approximately 580 each year.

As these documents merely represent those processes which have survived, do not (for the most part) include claims for debts of over £40 Scots, and exclude all those debt/credit transactions which were settled in another court (5.2.2) or without recourse to law, they can only represent the tip of a massive iceberg of indebtedness. This mass of indebtedness and its social significance will be considered in the concluding chapter. Despite the process data representing such a minute component of the entire spectrum of debt, there is little reason to assume that they contained any inherent bias, in relation to subject or value, which renders the source inappropriate for a study of small debts in rural society (5.2.2).

It is interesting to note that the number of processes going before the Commissary did in fact vary broadly in

⁸ The Dunkeld commissariat covered a substantial area. In Perthshire, it included the parishes of Aberdalgie, Abernytie, Alyth, Auchtergaven, Blair-Athol, Caputh, Cargill, Cluny, Coupar Angus, Crieff, Dowally, Dull, Little Dunkeld, Forgandenny, Fortingall, Kenmore, Killin, Kinclaven, Kinloch, Kirkmichael, Lethendy, Logierair, Madderty, Meigle, Moneydie, Moulin, Redgorton, St Martins, Tibbermore, Weem and part of Arngask. Nine other parishes in Fife, Linlithgow, Haddingtonshire and Forfarshire also lay within the Commissariat. Grant, F J (1903) Commissariat Record of Dunkeld, Register of Testaments 1682-1800, SRS, introduction.

line with peaks in meal prices and periods of social turmoil. The Product Moment Correlation Coefficient of the combined total of unextracted and extracted processes against Perth Fiars Prices for Oatmeal⁹ is only +0.439. Although not in itself a significantly strong correlation, the graphs (Figs 5.1, 5.2, & 5.3¹⁰) show that in certain years the two sets of data appear to have a strong relationship: the most obvious link occurs in 1740 when meal prices soared following a poor harvest the previous season. With more cash going out of the system to buy meal for basic subsistence needs, or pay cash equivalents for rents due in meal, more debts would have been left unpaid - either by cash or kind - so more creditors had to go to law. The following year also produced a poor harvest in Highland Perthshire¹¹ which may account for the continuing high level in small claims that year. The data for 1690 and 1697-1700 also suggest this type of relationship - hardly surprising in the famine of 1690 and the seasons dubbed the 'dark', 'ill' or 'hungry' years during the closing years of the seventeenth century.¹²

The process data also indicate that in times of turmoil

⁹ Flinn, M (1977) Scottish Population History, Appendix B

¹⁰ Most of the fiars' price data used here was collected whilst I was working for Dr A Gibson and Prof T C Smout, on their research project examining wages, prices and standards of living in early modern Scotland. I should like to thank them for allowing me to use some of the data I collected for that project, in this context.

¹¹ Leneman, L (1986) Living in Atholl, p149

¹² Graham, H G (1899) Social Life in Scotland in the Eighteenth Century, p146

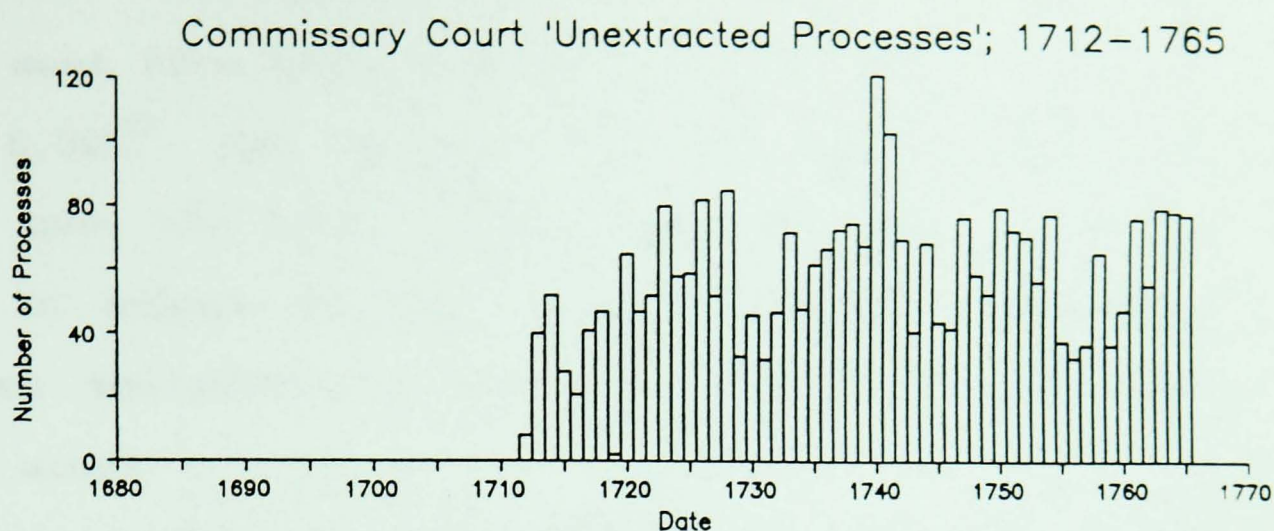


Fig 5.1

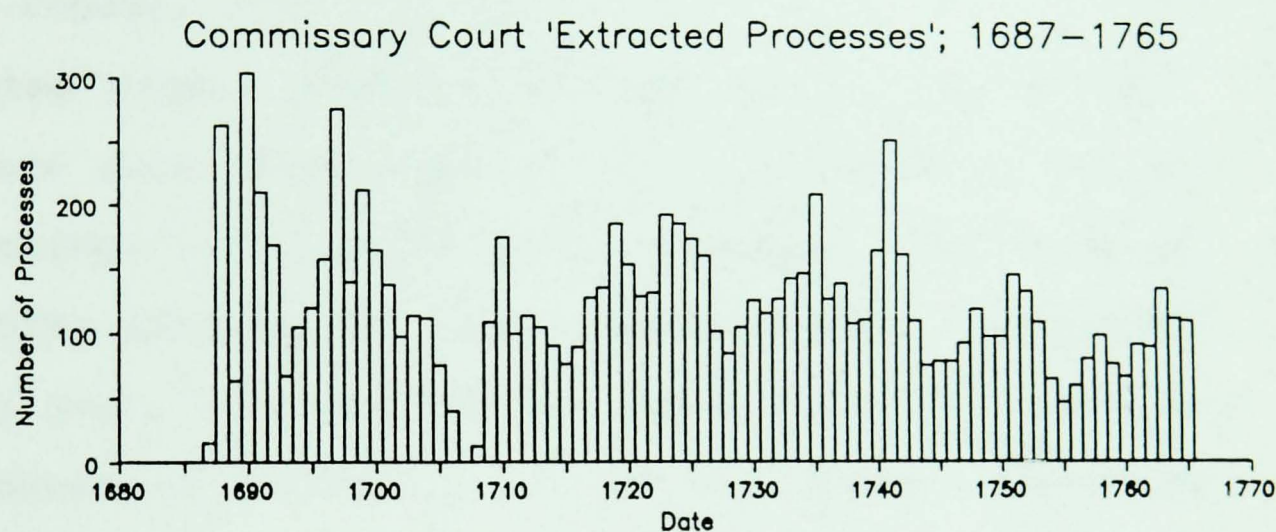


Fig 5.2

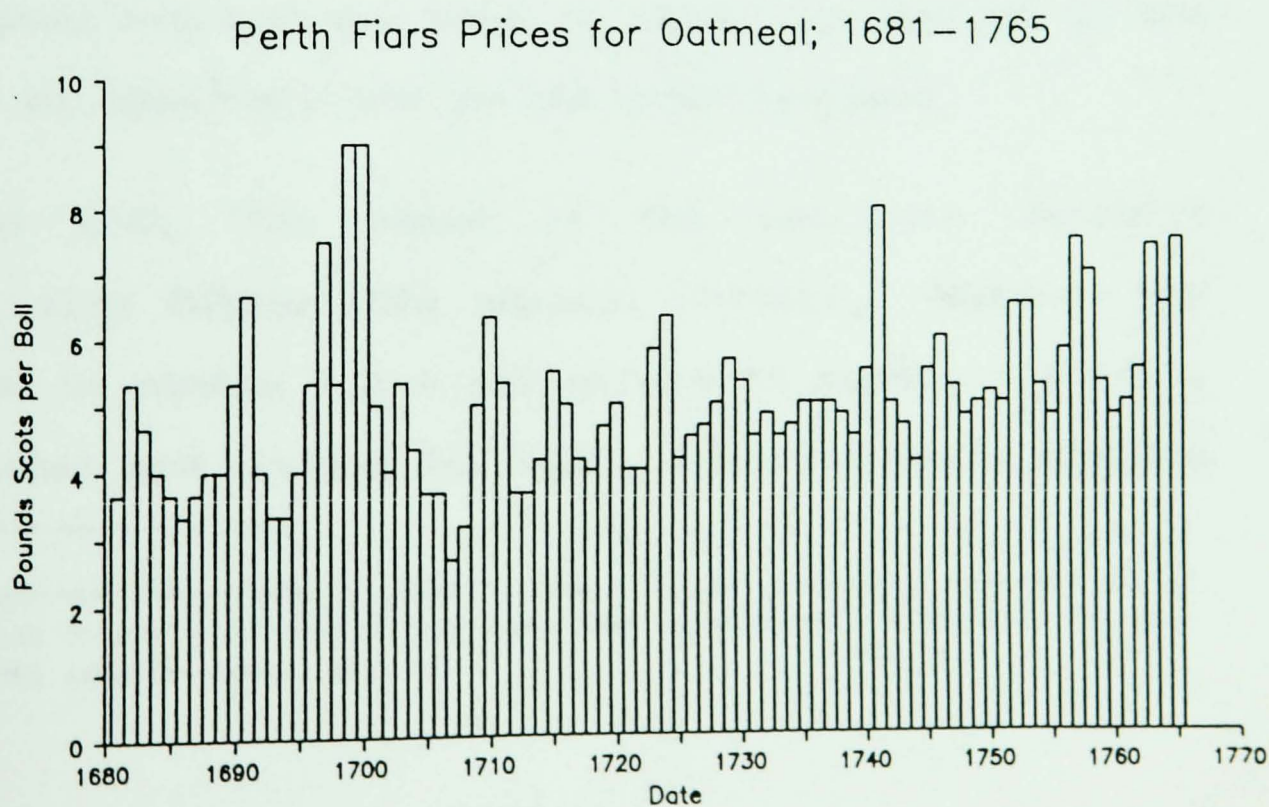


Fig 5.3

fewer claims were taken to law: disruption to the area in 1689 must have been severe with two armies totalling around 6,500¹³ men moving through, living off and fighting over the land. Culminating with the siege of Dunkeld in August of that year when the Cameronians barricaded themselves in the small town to trap the Highland army:

"The Cameronians held the mansion of the Marquis of Atholl and sallied out to set fire to any houses from which the Highlanders tried to maintain a steady fire. For four hours on 21 August 1690 [sic] the street fighting raged....."¹⁴

With wasted crops, burnt houses and continuing skirmishing there would have been little opportunity to set up court meetings or to bring civil actions. The rout of the Jacobite army on the Haughs of Cromdale, in May of the following year, saw the end of James VII's aspirations and a degree of military, if not political, peace in Scotland. It seems reasonable to assume that the high incidence of small claims (305) in 1690 was due not only to the poor harvest but also to creditors making up for the lack of opportunities in the previous year.

1715 and 1745, the years of the two main Jacobite Risings, also follow this general pattern. Whether the reduction in claims was a reflection of general upheaval in the area; men leaving to fight, families being divided

¹³ Lenman suggests that Dundee's Jacobite force at Killiecrankie totalled around 2,500 whilst Mackay's Williamite army comprised approximately 4,000 men. Lenman, B (1986) *The Jacobite Cause*, pp25-27.

¹⁴ *ibid.*, p29

by the cause and the devastation of crops and buildings, or whether there was simply general turmoil among the administrative and judicial bodies, cannot be known. A combination of the two is most likely.

The latter is, however, almost certainly the root cause during the period leading up to the Union of Parliaments. Although there are no extant processes for 1707, a steady decline in the years immediately preceding the year of the Union does suggest that it is quite possible that no claims were decerned that year. That the majority of the populace was sufficiently affected by the political upheaval prior to Union to prevent them making claims is highly unlikely. People certainly held strong opinions about the Union but, for the majority, life still revolved around a local core which was functionally largely unaffected by the political activities which were focused on Edinburgh. As a source, the small claims processes certainly offer no consistency in annual frequency but do seem to provide a general indicator of periods of crisis.

The original intention had been to survey both the extracted and unextracted processes which relate to the Grandtully estates complex. After examining the documents for the first four years of the surviving sequence of extracted material it was apparent that this aim could not be achieved. The limitations of time simply made it impossible to look at the complete run of

records for the period 1687 to 1765. None of the processes has been indexed by the SRO; they are bundled according to year and commissariat only. Unfortunately, this means that there is no way of identifying relevant documents without untying, unfolding and reading, at least part of, every individual process.¹⁵ An index of the pursuers in each process does exist for the extracted processes. The nineteenth-century compiler looked only at the outside of the folded processes, where the names of the pursuer and defender can be found, and gives no indication of the relevant parish, barony or fermtouns. Occasionally it was helpful in cases of difficult palaeography but was otherwise of no use in this study. When these difficulties became apparent it was decided to limit the survey to extracted material and to look at processes in 5 year intervals. The material collected from the first 3 years was retained and thereafter the processes from 1690, 1695, 1700 etc were studied.

This method had obvious drawbacks. By not considering the unextracted material the entire area of primary debt litigation was omitted. Nevertheless this was thought to be preferable to the option of looking at a shorter period as it enabled the final data set to be compared

¹⁵ This problem is exacerbated by an administrative problem in the SRO: being unindexed these documents could only be examined in the presence of a member of the SRO staff - it was not always possible to arrange this so further time was unavoidably lost.

with the testamentary material and integrated with the estate records. It also meant that the data gathered did not form a continuous run from year to year. The most significant limitation which this imposed was the problem of not being able to identify or follow related actions over time. This would have been an interesting facet of the study but a survey of the nineteenth-century index of litigants' names suggested that there were in fact few such sets of processes. Many of such actions would, in any case, have gone to appeal in a higher court.

As the intention of the search was to extract information from only those processes containing claims which were being pursued or defended by individuals living within the Grandtully Estates, it was impossible to foretell the proportion of documents which would prove relevant. After examining almost 3,000 documents and checking the location of each of the participating parties in every claim, it proved that 24.9% of the claims were relevant. This situation is illustrative of one of the standard problems faced when using documentary material; administrative units do not coincide geographically. The estate, parish, commissariat etc are inevitably of different extent in space and may well alter with time. At present there is no other way of tapping this vast source of data.

In order to identify the participants in the small claims

transactions it was essential to look at only those which fell within the estate boundaries. A cross-indexed system of over 3,500 personal and place names containing information relating particularly to rents, tacks and status, constructed with data extracted from the Murthly estate records¹⁶ and testamentary sources, was employed to identify these individuals.

When the need for such an index was recognised, the feasibility of putting the material onto a computer database was examined. At the time no appropriate software was available; existing databases could not identify and link related names - Grandtully, Grandtullie, Grantully, Grantullie, Gairntullie, and Grantilie are all immediately identifiable as the same name to the human mind, but to the computer are all quite independent. To overcome this problem, lengthy and extremely time-consuming directories of each possible variant of every place and personal name would have to have been constructed.¹⁷ At this stage the decision was taken not to use a computer database although with subsequent improvements in the software, it would now probably be preferable to employ one of the more sophisticated systems available. Nevertheless, there are certain advantages in being able to extract cards from an

¹⁶ SRO GD121

¹⁷ Welford, J (1980) A Project on Nominal Record Linkage by Computer, Applied Historical Studies Newsletter, The Open University, pp1-3

index and move them from archive to office as appropriate.

The finished Estate-Index proved to be surprisingly successful in identifying individuals mentioned in other sources, and providing supplementary information about them, particularly so, given the inevitable problems of name duplication and the frequency of certain surnames. 8.4% of the individuals identified had the surname Stewart, the not infrequent system of using aliases and the wide variety of spellings used for place and personal names - 9 different spellings of MacFarlane were found - all caused indexing problems. Where possible, however, individuals were 'tagged' using spouse's name, profession, status or location. The last was least satisfactory given the high mobility of the tenantry¹⁸ and the frequent practice of relating an individual to the place under discussion in the document; to places where he may have held grazings, shealling rights or rigs in farms other than where he lived. A combination of 'tags' was used as often as was practicable to ensure as high a degree of accuracy in cross-indexing and identification as possible.

The Estate-Index was particularly efficient in identifying the tenantry. This proved to be invaluable in relation to the small claims processes. A high

¹⁸ Mitchison, R (1983) Lordship to Patronage. p82

proportion of both pursuers and defenders, identified, were found to be members of the tenantry (6.1.3). The indexing system made it possible to connect completely disparate documents concerning one or related individuals (Appendix 5). To take one example, the changing fortunes of one of the Stewart families in the Barony of Grandtully can be elucidated using information gleaned from rentals, a tack, petitions and a testament.

In a rental of 1691¹⁹ Alexander Stewart is shown to be holding both the Miln of Cultilich (later the West Mill of Grandtully) with its $\frac{1}{2}$ merkland croft and Middle Cultilich of 2 merklands for the combined rent of:

28 Bollis meall
£9 Scots
2 geese
2 poultry
20 loads of peats
1 Boll bran
12 capons
1 swine

Clearly a comparatively wealthy tenant and miller paying one of the highest rents in the barony at that time. From a later document - a petition made by his grandson to Sir John Steuart of Grandtully in 1762 (see below) - it is clear that he was also a Tacksman. By 1725 he was paying a rent of:

28 Bollis meal
£24.1.4
4 geese
4 poultry

¹⁹
SRO GD121/41/223/80

1 Reik Hen²⁰
40 Loads of Peat²¹

for the mill and no longer held Middle Cultilich.

Alexander Stewart died in 1735 leaving a testament²² for which his second son Walter was executor and his nephew Neil Stewart cautioner. The testament is not detailed and mentions only one item; a bond for £25 principal with £4 expenses and annual rents 'resting owing' since it was granted in 1704 by John Stewart in Clochfoldich. The very fact that Alexander Stewart was able to lend money, and leave it outstanding for such a long period, further establishes him as one of the wealthier members of the tenantry, even after he no longer held Middle Cultilich. There is no indication that he had gone to law to recover the outstanding debt. Had he done so, or threatened to, his debtor would almost certainly have paid the instalments of annual rent which were outstanding for the entire period. Even if John Stewart was unable or unwilling to repay the principal and interest, Alexander could have poinded his moveable belongings at any time during the previous 31 years had he been in need of the principal.

Alexander's eldest son has not been identified but as his third son was named Alexander and his second son,

²⁰ A Reik Hen was a component of rent payable at Christmas from every house which 'reiked' - had a fire.

²¹ SRO GD121/41/223/100

²² SRO CC7/6/4

Walter, acted as his executor, it may be assumed that the eldest son died in childhood. Both the surviving sons became tenants in Grandtully: Alexander as a joint tenant in half of the town of Tombane in Strathbran which extended to half a ploughland. For that holding, in 1732, Alexander and his joint tenant (another Walter Stewart - no relationship has been identified between the two) paid:

£33.6.8
1 kid
1 chopin^{2 3} of butter
17½ loads of peats
½ turse^{2 4} of straw
½ turse of heather
½ a wedder
2 reik hens

He was no longer there in 1735 and does not appear in the record again until 1762.

Meanwhile, in 1720 his brother Walter received a liferent tack for Clachran:

".....Walter Stewart Second lawfull son to Alex[ande]^r Stewart at the Miln of Cultilich....Lett to the said Walter Stewart (secluding his Assignneys) during his lyfetime All and Haill the town and lands of Clachran As the samen is presently possessed by Robert Stewart there with houses Biggings yeards tofts crofts grass and haill other pertinents thereto belonging lying within the Parochin of Dull, Barrony of Grantully and Sherriffdom of Perth Beginning his entry to the houses and grass att the term of Whitsunday next to come..."^{2 5}

By 1725 he had also acquired the tenancy of the whole of

²³ Scots half pint (approx. 0.85 litre)

²⁴ Bundle or sheaf

²⁵ SRO GD121/38/212/52

the lands of Wester Coshieville. For the two towns he paid rentals of:

Clachran

1 Boll bear
2 Bolles meal
£18.16.8 Scots
2 geese
2 poultry
1 reik hen
10 loads of peat

Wester Coshieville

3 Bolles bear
6 Bolles meal
£16.17.4 Scots
2 geese
2 poultry
1 reik hen
40 loads of peat²⁶

Seven years later both tenancies were held jointly with his uncle Neil Stewart (cautioner for Alexander's testament). For the two holdings the rentals were now:

Clachran

£8.3.4
£10.13.4 for 1 Boll bear
& 1 Boll meal converted at
8 Mks per boll
1 Boll bear
2 Bolles meal
2 geese
2 poultry
1 reik hen
40 loads of peats

Wester Coshieville

3 Bolles bear
6 Bolles meal
£16.17.4
2 geese
2 poultry
1 reik hen
10 loads of peats²⁷

In the following 15 years the fortunes of the three men diverge. Neil Stewart, who must have been substantially younger than his brother Alexander (not an uncommon circumstance when large families were the norm), obtained a liferent tack on the whole of Wester Coshieville in 1745. For this he paid a grassum²⁸ of £66.13.4²⁹ and was still there in 1759. He features only once more in the

²⁶ SRO GD121/41/223/100

²⁷ SRO GD121/87/1/19

²⁸ Down payment made on entry to a lease or feu-ferme tenure.

²⁹ The sum paid by a tenant on the granting or renewal of a lease.

documentary record when he is called as a witness, on behalf of Sir John Steuart of Grandtully, at Perth Sheriff court in April 1756. The reason for his appearance is not specified.

Life seems to have been less kind to his nephews Walter and Alexander. In 1747 Walter is listed amongst the poor of the parish. On 20th March of that year Sir George Steuart of Grandtully signed an order in Dundee to pay "Walter Stewart in Wester Coshevealle in the Barrony of Grandtully....a great object [of poverty] the summ of therty punds Scotts".³⁰ A week later a receipt is issued for the payment:

"Grandtully Castle 28th March 1747

Received by me Isobell McKimmie spouse to the within Walter Stewart in name of my said husband from...Mr William Mackewan...the sum of thirty pund scots to be imployed for maintaining my husband on death bed att present by me".³¹

The fate of Alexander is described in perhaps the most interesting document which relates to this family. The downfall of the family from wealthy tenant and tacksman to poor cottar is graphically described in a plea:

"To the Honourable Sir John Stewart of Grandtully Baronet 1762

The Petition of Alexander Stewart third lawfull son of the Deceased Alexander Stewart Late Tacksman in the West Miln of Grandtully and nephew of Neill Stewart in Wester Cosheveall

³⁰
SRO GD121/43/228

³¹
SRO GD121/43/228

Most humbly sheweth

That I was as Tennant in Grandtully and my father and grandfather likewise all of us paying the yearly rent to Grandtully, But it came to pass with me that my worldly means came short till I was force to quite labouring and is now upwards of twenty years a poor cotterman in Piteharn [Pitcairn] in Grandtully, I received of Sir George his good will and pleasure a little yearly of the mortification I also got last year by your Honours Good will of said mortification and this year I humbly begg of your Honour that you'll continue your good will to me as I am now of old age and are not able to work nor win bread for myself".³²

This detailed example is not an attempt to suggest that the Estate-Index is, or ever could be, either comprehensive or infallible. With a high proportion of the population never, or very rarely, appearing in the documentary record and the various difficulties posed by the data, inevitable limitations must be accepted. Nevertheless the index has proved to be an invaluable tool for increasing the usefulness and enabling the integration of the various sources.

³² SRO GD121/43/229/1/42

5.2.2: Claims for Debt in the Commissary and other Courts

All of the claims examined in this study were from 'Extracted' processes. In Scots law the term 'Extract' has two meanings, both of which are relevant here. It signifies either,

"...the proper written evidence or warrant on which diligence or execution on a judicial decree may issue, or it signifies a copy, authenticated by the proper officer, of a deed, writing or other entry, of which either the principal is in a public record, or a transcript, taken from the principal, has been preserved in a public record."¹

Here, the actual documents were 'extracted' because the case had full authority in law. The unextracted material comprises cases which were dropped because of weakness of evidence, lack of funding or the parties agreed 'out of court'. In many of these an interlocutor² was made because of any of the above reasons. The extracted case, on the other hand, ran the full legal course and was subsequently signed by the Extractor. It had to be signed on every page and, in theory, contain a statement of the final judgement.

As previously mentioned the basic framework of each claim was the same. Pursuers and defenders were named and located by place of residence and sometimes by profession or social status. Each document was dated by the day of the hearing and any witnesses were recorded;

¹ Bell, R (1826) A Dictionary of the Law of Scotland, 3rd ed. p394

² An order or decision of the Court short of the final judgement.

occasionally their depositions are quoted in the process. The claims themselves contained the reason for the incurrence of the debt, often the date on which it was incurred and the stated value of the outstanding dues. Within that structure the claims varied immensely. They could be extremely simple such as that made by Patrick Steuart in Kymochine against Donald McCalline in Murthly of Grandtully (the defender was identified from the Estate-Index as a tenant). The process contained only this claim:

"Patrick Steuartt in Kymochine claims ag[ains]^t Donald McCalline in Murthlie of Grantully £6 Scots as the pryce of ilk boll of three bolls meall bought and received by him from me ane years since or thereby".³

It was dated 25th January 1688 and was witnessed by John Fendill in Murthly and Robert Stewart in Grandtully. No expenses or interest were claimed and no judgement recorded. Another process from the same year contained a claim by the miller at Balinloan in Strathbran, one Donald Duff, against David Borrie, portioner in Ballilagan who had taken on the debt on behalf of his brother William Borrie,

"...for the soume of £24 for his brothers prenteis for four years since or thereby for learning him to be ane miller and that it is of verritie that the s[ai]d David Borrie payed me the soume of 16 merks Scots thereof at two severall tymes 3 years since or thereby and as yet there rests me the soume of 20 mks of the s[ai]d soume of £24".⁴

This is an example of a 3-way debt transaction, a not

³ SRO CC7/3/3(3)b

⁴ SRO CC7/3/3(3)g

uncommon arrangement which will be considered in detail later. One other example of a process will suffice to indicate the variety of reasons why claims were made. This one dates from 1687 and was made by Robert Neucator, a tenant in Tomgarrow. Three witnesses are listed and his wife named because she features in one of his claims.

"In the first I clame att John Fisher in Meikle Fundowie the soume of Twenty merks of money and ane boll oats or eight merks as the pryce thereof Which he promittit to me as an pairt of my tocher⁵ good with Cathrein ffisher my spous thrie year since or thereby

Item I clame att Johne Chapman in Dalmarnock eight merks as the rest of the pryce of an horse bought and received by him fra me half ane year since or thereby".⁶

John Fisher was summoned to compear⁷ before the witnesses brought against him in the action and the case was adjudged or decerned on behalf of the pursuer.

Decerning an action meant to give final decree or judgement. Without being decerned, the decree, which could itself take several forms depending upon the type of litigation, could not be extracted or the judgement implemented. In debt cases the statement of judgement would, if necessary, be accompanied by a warrant to charge the debtor and enable all competent diligence⁸ against the person or property to be executed.⁹

⁵ Dowry payment

⁶ SRO CC7/3/3/2

⁷ An order to present oneself or appear before a court

⁸ Diligence is merely the civil equivalent of an execution, ie the carrying out of a citation or criminal sentence. It is a term used almost exclusively in relation to debtors.

⁹ Gibb, A Dewar (1946) Scottish Legal Terms, pp26, 27, 29 & 34

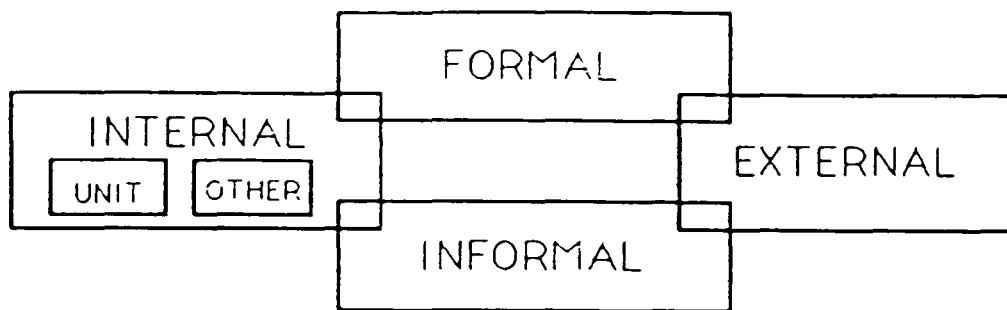
Many of the processes do not contain a record of the final judgement, but of those which do less than 5% find against the pursuer. Presumably the course of litigation was only followed when a successful outcome was fairly certain. In Clark's study of debt litigation in Writtle in Essex she found that over 80% of plaintiffs benefitted in some way from the action.¹⁰ In the data considered here most recorded decerned actions date from the latter half of the period and refer to debts specified in bills - being easier to prove than a deal made orally, the very high success rate of the pursuers is not surprising.¹¹

In order to analyse the material and relate factors such as decernment, payment of expenses, status of the participating parties etc the claim data had to be classified. This was done using the model of debt described in 1.1 (Fig 1 - repeated here as Fig 5.4) and by recording the elements of each claim within a strict framework. The method of recording and classification remained consistent throughout. Individual claims were extracted from each process and classified, as already described, into Categories, Forms and Types. In each case the designation was done by perceiving the transaction from the

¹⁰ Clark, E (1981) Debt Litigation in a Late Medieval English Vill in, Raftis J A (ed) Pathways to Medieval Peasants, p253

¹¹ Also, by excluding unextracted processes from the study, the proportion of successful claims is inevitably higher than would be found if the entire range of material had been examined.

CATEGORIES



FORMS



NO ECONOMIC
MOTIVE

MUTUAL
OBLIGATION

DEFERRED
PAYMENT

EXTERNAL
CREDIT

LOAN AT
INTEREST

USURY

a

b

c

a

b

c

DEBT TYPES

SALE

MATERIAL
LOAN

SERVICE
PAYMENT

OFFICIAL
DEBT

DUES

CASH
LOAN

EXECUTRY
DEBT

MISCELLANEOUS

1

2

3

4

5

6

7

8

Fig 5.4 Debt Classification Model

standpoint of the pursuer; credit was extended with either an economic or non-economic motive, transactions were Typed as sales, not as purchases.

In each case the same method and rules were followed:

a) Each claim was recorded by a number allocated to the process from which it came; by the estate in which the pursuer resided and hence an estate claim number and by the date of the process.

b) The place of residence of both the pursuer and defender was noted as that at the time of the original transaction, not where they lived on the date of the claim.

c) Each transaction was designated as; I - Internal, both parties lived within the estate group. Two subsets of the Internal group were identified: U - Unit, both parties lived on the same estate; O - Other, although both parties lived within the Grandtully group they were from different estates. E - External, one of the litigants lived outwith the estate complex. The direction of the debt was in each case recorded.

d) Claims which were internal to the estate complex (O), as opposed to an individual estate, were recorded under the place and estate from which the pursuer came ie the debt flow was inwards. In each case the reverse element of the transaction - defender > pursuer - was noted and

where appropriate included in calculations.

e) Each transaction was coded according to the reason for the debt being incurred. Most relate to items which were sold:

- A: Alcohol (ale or whisky)
- C: Cloth, yarn, lint
- D: Tocher, funeral or wedding expenses
- E: Equipment - tools, looms, nails, unspecified iron
- Es: Unspecified claims by Estate officials
- Ex: Executry items
- F: Household furnishings
- G: Garments
- Gg: Grazing
- Gr: Grain - bere, corn, oats
- L: Livestock
- Lo: Loans - cash, kind, bill, bond
- M: Meal and victual
- Ma: Malt
- P: Provisions - items of food and unspecified merchant goods
- Pt: Fuel
- S: Seed
- T: Theft
- Ti: Timber
- U: Unspecified - information missing
- W: Work done or not done
- X: Destruction of crops by livestock
- Z: Miscellaneous

Confusion could arise in the coding where transactions, other than sales, were enacted in kind; in 1760 John Robertson in Balnaguard brought a claim against Margaret Cair, servant to John Cair in Downs Mill. It stated that the she had been,

"Engadged to serve the Comp[laine]^r from Mart[inm]^{as} to Mart[inm]^{as} next for which the Comp[laine]^r was to pay 7 mks money wage Eight elns of Camblett¹² and to pay for the dying of 4 elns thereof Six elns of Twilling Six quarters of winchett¹³ Two elns of Linnen Two pair of

¹² Cambric

¹³ Wincey; cloth with a woollen weft and a linen or cotton warp.

Common or ane pair of fine shoes and two lippies of lintseed sowing amounting in whole to £16.2 Scots..."¹⁴

The pursuer is demanding payment of this sum because Margaret Cair had failed to enter into his service. Although the components of the fee included items which, had the debt been incurred through a sale, would have been coded as C, G, S etc, the complete claim was coded as W - for work not done.

f) A claim made at one value but decerned at another is recorded, for the purposes of analysis, at the former level. It would have been preferable to have analysed the material at both levels but as few judgements introduced a difference between the claimed value and the allowed value this was not possible. To be consistent with the other figures the claim value had to be used.

g) Whether annual rent was explicitly charged, damages and/or expenses¹⁵ claimed and/or allowed, and whether any judgement was recorded were all noted.

h) If a claim concerned the laird or factor (on estate business) the transaction was classified as being internal to the estate on which the other party lived.

i) If the laird or factor (on estate business) was claiming against an individual outwith the estate complex then the transaction was classified as external to

¹⁴
¹⁵ SRO CC7/3/76

¹⁵ The technical expression for the costs of an action in Scotland.

Murthly estate. From the testamentary data and evidence from estate records it was clear that Murthly was the major administrative centre of the four estates.

j) The number of defenders and pursuers and the presence of a cautioner were noted.

k) Each claim was categorised as being Formal or Informal and I,E on the basis of the debt classification model.

l) The Form and Type of each claim was established and identified with the following codes:

Form		Sub-From	
Non-Interest	1	No economic motive	a
		Mutual obligation	b
		Deferred payment	c
Interest	2	External credit	a
		Money-lending	b
		Usury	c
Type			
	Sale	1	
	Material loan	2	
	Service payment	3	
	Official debt	4	
	Dues	5	
	Cash loan	6	
	Executry	7	
	Miscellaneous	8	

m) Finally, by using information extracted from the documents and the Estate Index, any additional information about the litigants was noted.

This system was applied to all of the claims. For

example Process No.281¹⁶ contained two claims. The pursuer in both was John McNab a brewer in Dunkeld. The defenders were Alexander Puller of Colrie and Patrick MacFarlane in Muirheadston. Both claims were for outstanding loans.

1) Against Alexander Puller:

Process No.	281
Estate No.	M266 (Murthly)
Date	1760
Internal location	Colray >
	(> identifies the direction of the debt and hence the pursuer and defender)
External location	Dunkeld
	(locations may both be Internal or one may be Other)
Reason	Bill
Code	Lo
Value	£3.9.0
%rent	+
Decerned	+ with £1.1.0 deducted for weaving done by the defender
	(+ sign here = decerned in favour of the pursuer, * = in favour of defender)
Damages/Expenses	-
Pursuer	S/Brewer (one man)
Defender	S/LRT & weaver (one man/holding Liferent Tack)
Category	I/E (Informal and External)
Form	2a (Loan at interest with external credit)
Type	6 (cash loan)

The Estate Index provided further information concerning

¹⁶
SRO CC7/3/76

the defender. A tenant and weaver in Colray in 1732, he held 1¼ acres for a rent of £12 and 1 reik hen.¹⁷ By 1760, the year of the claim, he had acquired a liferent tack on his son William's life for 'a part of the town of Colrie'.¹⁸ In 1765 Alexander Puller is listed as a defender, along with 78 others from Murthly estate, in a case to be heard at the Sheriff court in Perth. The pursuer was Thomas Dundas of Fingask.¹⁹ The nature of the action is not stated.

2) Against Patrick MacFarlane:

Process No.	281
Estate No.	M267
Date	1760
Internal location	Muirheadston >
External location	Dunkeld
Reason	Bill
Code	Lo
Value	£3.5.6
%rent	+
Decerned	+
Damages/Expenses	-
Pursuer	S/Brewer
Defender	S/LRT
Category	I/E
Form	2a
Type	6

Once again additional information was extracted concerning the defender: In 1711 his father, also Patrick MacFarlane, received a 19 year tack on a 4th part of Muirheadston. This tack was renewed in 1729. Three years later the rental on the holding was £48.4.0, 2½

¹⁷

¹⁸ SRO GD121/87/1/19

¹⁸ SRO GD121/87/1/15 (1) & GD121/87/1/18

¹⁹ SRO GD121/37/207/21

reik hens and £1.10 in shear dargs.²⁰ The defender took over the holding from his father at Whitsun 1737 when he was in receipt of a liferent tack from Sir John Steuart of Grandtully. He appears in the record for the last time in 1754 as a witness for Sir George Steuart of Grandtully in a dispute with Dalguise estate concerning tenants' rights over Clacknaelrig Moss.

The sets of data from these two claims exemplify the way in which every process was examined. However, a small number of claims could not be fitted into the classification model and had to be placed in the additional group of miscellaneous actions (Code Z Type 8). Only 38 claims had to be dealt with in this way: 18, because only the value of the claim was stated and no reason given; 3 were decreets of judgements upholding the decision of a lower court (probably a barony court); 10 for instances of theft (until the data are examined at the Code level thefts are considered as a subset of the Code Z classification); 3 for damages and 4 for sclander (verbal abuse).

Those which were not specified were almost certainly sales or loans; any other reason would have been described at length according to normal court procedure. Code U was applied to those debts which were sales but no further reason was given for their incurrence; in total

²⁰ Darg; a day's work or product of a day's work.

there were 28 such debts.

The unspecified actions apart, these miscellaneous claims lie across the dividing line between civil and criminal law. Normally civil law is concerned with the "mutual rights and duties of persons with each other", whilst criminal law deals with conduct which is "deemed objectionable or harmful to the community as a whole".²¹ Cases of theft and claims for damages - particularly for assythement (monetary compensation for injury or death), bloodwite (a fine for shedding blood) and sometimes sclander would all be expected to feature within criminal law only. However, it is apparent that these actions were sometimes treated within civil jurisdiction and precisely as though they were debts.²²

An action brought against a thief was not concerned with fining the perpetrator for the criminal act. Instead it focussed on claiming the value of the items which had been stolen, demanding their return, or requiring the payment of damages for the consequences of the theft. In 1700 Alexander Thomson, a brewer in Grandtully, the plaintiff in an action claimed:

"that about summer 2 years since I in my journey coming from Perth nearby the water of braan by the heat and

²¹ Walker, D M (1969) The Scottish Legal System, p85

²² It is interesting to note that anomalies still exist today in the apparently clear cut division between the civil and criminal law; particularly the rule that the only review of a decision in the (civil) Small Debt Court may be by the (criminal) High Court of the Justiciary. Walker, D M (1969) The Scottish Legal System, p85

weariness was necessitat to rest myself on the rod where I fell asleep and there was taken from me a new bonnet with a silver prick or needle to the value of £4 and after inquiries I having found the same in the hands and custodie of Alex[ande]^r Camrone".²³

The case was decerned and Alexander Cameron, a tailor in Strathbran, ordered to pay the £4 plus 40s expenses.

Another process records two claims made by James Gow in Milton of Deanshaugh; the first for an alledged theft, the second for his share of his mother's estate - an executry case. Both were dealt with in precisely the same legal manner; as debts 'resting owing'. In the former Gow, the pursuer, claims against another James Gow in Turrich:

"One cow and one two yeir old Stirk which belongs to me and was in the keeping of William Steuart in Shian And was intromitted²⁴ with and away taken by the s[ai]d James Gow...."

The pursuer claims the value of these animals as £24 and also:

"As damages sustained through want of the cows milk and other ways occasioned through his intrometting with away taking and wrongous detenscene of the s[ai]d cow and stirk",²⁵

he claims £10 in damages.

A further example of this type of use of the small claims system arises with slander cases. The following case occurred in 1705 when John Tyrie in Meikle Drumbuy, "did on 13 June....upbraid calimniate reproach defame and

²³
²⁴ SRO CC7/3/16(2)

²⁴ To handle, deal or interfere with.

²⁵
SRO CC7/3/35(2)

scandleezye the s[ai]d complainers by calling them base witches and that they had taken away his mildness these three years"²⁶

The complainers, Margaret Young from Little Drumbuy and Margaret Syme in Meikle Drumbuy, were awarded damages of £20 with an additional £20 to be paid to the procurator - presumably in the form of a fine. Tyrie was also ordered to stand, barefooted and bareheaded, before the whole congregation of the parish on three consecutive Sundays. There he was to publicly acknowledge the "perjurie done them". Finally, he was to pay £4 to the poor of the parish. These reparations may seem remarkably high, particularly at a time when a labourer could expect to earn perhaps £60 per annum and a farm servant around £20. However, they are no doubt the reflection of that period in the seventeenth century when "whole districts were seized by a witch-burning mania".²⁷ Even during the opening years of the eighteenth century it must still have been one of the most terrifying slanders to have been accused as a witch. Reparations were accordingly high for those 'wrongly' accused.

As in most early legal systems Scots law originally operated a system of payment of composition or damages. Through the payment of damages, either on the basis of a previously set system of fines or through a valuation of

²⁶ SRO CC7/3/21

²⁷ Smith, J Irvine (1958) *The Transition to the Modern law 1532-1660*, in *An Introduction to Scottish Legal History, The Stair Society*, p42

the damage done, the culprit was completely exculpated. In 1587 it was recognised that the Crown could pursue and penalise criminals in the interests of the good of the whole community, not just the individual victim - the fundamental distinction between civil and criminal law. However, even after that time, elements of the old feudal system remained; sometimes like the baron court changing with the times (see below), but other features remained in law and continued to function with little alteration. The payment of damages to the women accused as witches with an additional fine payable to the procurator is a typical example of this:

"Payment of composition or damages by the criminal or his kin to the victim or his kin, together with payment of a fine to the holder of the 'Peace' which had been broken as a result of the crime, was.....completely exculpatory of the crime."²⁸

The systems of bloodwite and assythement were similar medieval relics. Assythement was usually associated with cases of very serious crime.²⁹ Originating in a wish to abolish bloodfeuds, the compensation was paid to the injured party or his family in order to prevent retaliation and, hence a further loss of manpower for the King, clan or lowland laird. The system was used throughout both the Highlands and Lowlands until the latter half of

²⁸ Smith, J Irvine & MacDonald, I (1958) Criminal Law in An Introduction to Scottish

Legal History, The Stair Society, Chap XXI, p299

²⁹ Leneman, L op cit, p167

the seventeenth century.³⁰ After that time few cases are recorded south of the Highland Line, certainly not in the higher courts.³¹ To the north the system endured until the middle of the eighteenth century with sporadic references continuing to appear until the 1770's.³² As so few of the Commissary Court small claims records have, so far, been examined it may prove that assythement continued to be used in straightforward cases of assault - as opposed to bloodfeuds - in such civil cases, for rather longer than previously thought.³³

The case of Robert Cameron recorded in the Dunkeld Commissary Court is particularly interesting as the claim for assythement was made in the second process in the case. The first involved the defendant being convicted and fined, in other words, the interests of public good were recognised. The second stated:

"That where at St Johns day last the s[ai]d defender having invaded me on the highway coming from Perth to Dunkeld did cut me exceedingly in the head with ane oyl pitcher to the effusione of my blood....and true it is that the s[ai]d wound having occasioned the loss of a great quantity of my blood before I could get to Dunkeld to have it dressed I fell in a fever and continued bedfast severall weeks Whereby I lost the benefit of the harvest and my haill other affairs were impeded. And therefore of all law and equity and reason the s[ai]d Alex[ande]^r Jackson ought to be decerned to make pay[men]^t to me not only of the sum of 100 mks assythment

³⁰ Wormald, J (May 1980) Bloodfeud, Kindred and Government in Early Modern Scotland, Past and Present No 87, p62

³¹ Morison, W M (1801-1811) The Decisions of the Court of Session from its Institution to the present time, digested in the form of a dictionary Vol 1

³² Leneman, L op cit, p169

³³ Leneman records cases of assythement appearing in the baron court of Lude, and notes several other occurrences in correspondence, Leneman, L op cit, pp159-169

but also of £12 payed to W[illia]m Spree apothecary for medicaments".³⁴

Robert Cameron, the pursuer, won his case but the assythement and medical fees combined were restricted to £30.

This case is indicative of the gradual change in the use of assythement or compositions. In this instance the assythement seems to have been simply a payment of damages without any intrinsic element of exoneration. Nevertheless, the original usage certainly continued in use until the end of the seventeenth century. During the following century composition of crimes disappeared with the distinction being made between deliberately criminal acts and negligence or civil wrong.³⁵ Actions of assythement survived in the form of straightforward payment for damages until the nineteenth century when it was finally absorbed into the new legislation for reparation.

The attitude to compounding crimes revolved around the idea that the perpetrator 'owed' the victim something for damage or injury. Indeed it is arguable that these 'debts' were seen as social dues. They were like diplomatic debts helping the cohesion of social bonds. Where crimes were 'settled out of court' the payment of composition was sometimes made in return for the victim

³⁴ SRO CC7/3/35

³⁵ Smith, J Irvine & MacDonald, I op cit, p301

or his kin pardoning the crime. A method whereby,

"the kin of a victim in consideration of assythement forgive, pass over and for ever forget the murder."³⁶

Although legally incompetent, such agreements, if adhered to, must have prevented or stopped the escalation of many bloodfeuds.

For the purposes of this study these actions have not been classified as 'dues' (Type 6). First, because throughout the period under consideration the distinction between civil and criminal law had already been established and hence the usage of assythement or damages was not consistently that of its original sense. Second, although the principle of paying damages for crops eaten by strayed cattle is the same as that of paying for injury to an individual, the two cannot readily be bracketed together either morally or legally. This distinction notwithstanding, the significance of payments as reparation will be returned to later in the context of indebtedness and social bonds.

Although the cases of slander, theft etc provide fascinating vignettes of life in the late seventeenth and early eighteenth century they are largely peripheral to the main body of data being considered here. Of the vast majority of claims one feature rapidly became apparent during the initial survey of the documents; that

³⁶ *ibid.* p300

an External element was a component part of each debt transaction. Either the Pursuer or Defender lived outwith the estate complex. For each estate the percentage of claims which exhibited an External element was:

Grandtully	73.4%
Murthly	84.9%
Strathbran	63.0%
Airntully	95.7% (Fig 6.15)

The two explanations for this imbalance are: first, a creditor living in the same toun or district as his debtor can more readily insist upon and get repayment than a creditor whose debtor lives some distance away. Furthermore, apart from the fact that the vast majority of transactions must have been settled amicably and as agreed, consequently leaving no record of their occurrence, many must have been settled through an intermediary. The most likely persons to figure as such conciliators would be the birlaymen. These men lay close to the foot of the hierarchy of estate administration (Fig 5.5) but acted as one of the most important bonding agents in the estate community. These 'honest' or 'sworn' men³⁷ were appointed from within the community³⁸ sometimes by the Laird, or by the court.³⁹ They were trusted men, often elders of the kirk, who usually undertook the work voluntarily; overseeing the everyday

³⁷ Whyte, I (1979) *Agriculture and Society in Seventeenth Century Scotland*, p49

³⁸ Leneman, L (1986) *Living in Atholl*, p152

³⁹ Mitchison, R (1983) *Lordship to Patronage*, p81

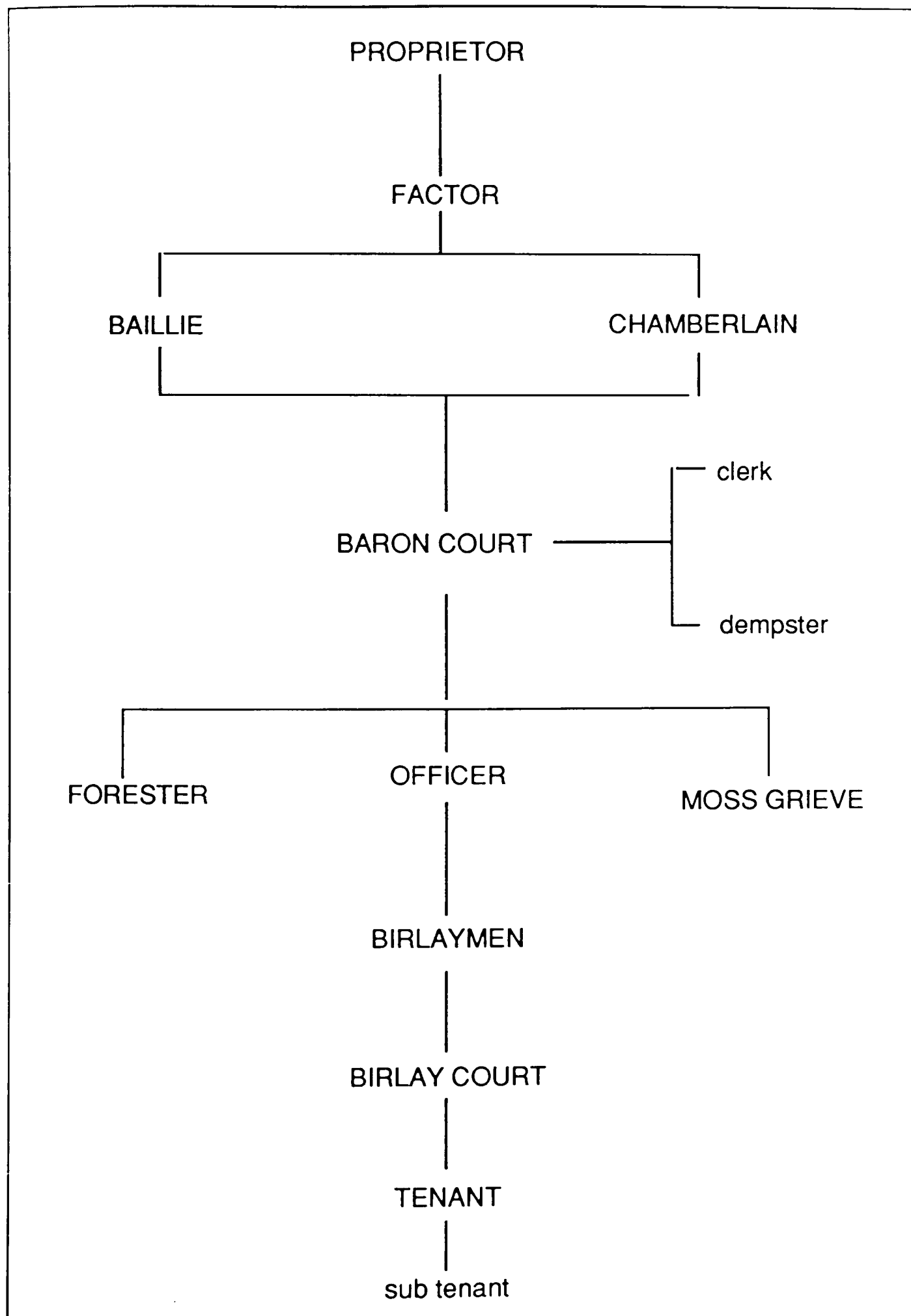


Fig 5.5 The Hierarchy of Estate Management
(Source: I.D. Whyte 1979)

functioning of the estate they were responsible for ensuring co-operation amongst the tenants, particularly in relation to services and boundary disputes. Additionally, they were responsible for valuing buildings at commencement and expiry of tacks and overseeing allowances for improvements. On August 15th 1710 three of the birlaymen on Murthly Estate met to check a claim for building improvements:

"This day mett John Baxter in Little Burnbane, John Souttar in Collra, John Robertson in Sloginhole Thrie of the Burlamen anent the necessarie Advanced be Mr John Kinnell in Sloginhole for mounting a byer from the found 12 lib scots 2 chimneys and a partition wall 4 lib 10s A Chamber door with lock and bands 2 lib 12s Lock and bands

for the outter door 1 lib 2s and this they gave as their verdick be wanting to make the house sufficient and habitable as with their subscriptions.....

Sum £20.6.0

Which with 24 foot of glass for the windows makes in whole £26.6.0"⁴⁰

Not only were these men given responsibility for such outlays from estate funds it was also the birlaymen who oversaw the distribution of meal to the poor from the estate girnell:⁴¹

"We George Scott in Ballinluig, John Anderson in Tomptewan and William Stewart in Lednaskea Byrlemen of this Barroney and elders of the parish doe hereby attest that Donald Mercer Ground Officer and Sir George's Girnellman did by the factors orders give to Robert Stewart in Ballinluig and Donald Kerr in Craggan his Relict two great objects of Charity within this Barrony of the Cropts 1742 and 1743 the Quantity of meall following out of Sir George's Girnell To witt To the said Robert

⁴⁰

SRO GD121/45/241/27

⁴¹

Girnell: granary, chest or storehouse for grain.

Stewart two Bolls and an half of meall and to Donald kerr's Relict 2 firlots and 2 pecks and which meall was given to the above persons in small quantities at different times when they were in great straits. In witness whereof we signed it att Grandtully Castle"⁴²

These men were trusted by laird and tenant alike and to them many must have turned to help solve disputes over purchases and loans - particularly those in which both debtor and creditor lived locally and would be personally known by the birlaymen. Such informal arbitration provided a means of avoiding litigation and was the informal equivalent of the use of deeds of submission, compromises and decree arbitrals used by those in the upper classes. Like almost all transactions made amongst the commonality and settled out of court, these disputes and subsequent agreements were simply never recorded.

The second reason for the imbalance was the baron court. The fulcrum of estate administration, it offered everyone, from the poorest cotter to the laird himself, an instrument of justice which concerned itself with "the weill of the tenandis and keiping of of gude nitchtburheid"⁴³

Originally a feudal institution, the baron court maintained its administrative importance over the centuries.

⁴² SRO GD121/43/228/3

⁴³ McIntyre, P (1958) *The Franchise Courts*, in *An Introduction to Scottish Legal History, The Stair Society*, p376

Predominantly it functioned as a means of protecting the interests of the baron or laird but, in theory at least, the court was impartial; whether the defendant was the proprietor or a cottar. The main business of the baron court was the prosecution of tenants for arrears of rents - landlords could poind for rent in their own baron courts - and enforcing clauses in leases. Whyte's discussion of the jurisdiction of this court also mentions the importance of landowners prosecuting for damage to their property; particularly in relation to the cutting of green wood - in times of severe timber shortage, dyke breaking and damage to crops.⁴⁴ These and other areas of dispute all feature in the one document which provides direct evidence of the existence and workings of a barony court in the Grandtully estates. It comprises a "Memorandum for the Court of Strathbran and Gairntullie 27 May 1713"⁴⁵ and lists the subjects to be considered by the court. Although the document is quite badly burnt, the majority of the text is legible and provides an useful overview of the business of the barony court:

"Imp[rimis] the Court being tented to call the haill tenents names to ask the officer if there be any blood ryots⁴⁶ or disobedience to Caradges ...ask him the

⁴⁴ Whyte, I (1979) *Agriculture and Society in Seventeenth Century Scotland*, p45

⁴⁵ SRO GD121/45/241/29

⁴⁶ This seems to have included any minor affray in which blood was shed or 'straiks', blows or punches, were thrown.

officer how the tenents goes to and keepes there...

...to ask him if there be any of the tenents that tak in grass oxen

to ask if the tenents in every towne doe keep bulls conform to....act of Court

ask him if any of the tenents Cast feall or devlots within there head dickes

ask him anent Mureburns and what of the hills are burnt contrar to Law

to ask anent Craigenwhalich [Craigie Wallace] how the wood there is hained⁴⁷ and how the trees ar preserved

to ask how tenents keep there marches

to ask anent Garntullies hiland mears

to ask how the rent is payed

To order the tenents to provide there Kides good and to bring them in when....with there butter

To speak anent keeping Litle Stallions in the hill lie".

A similar list is repeated for the Grandtully tenants with a number of items which relate only to that estate:

"to ask the officer how the tenents keeps and goes to their sheallings, and how neighbourhood is kept

To ask the tenents in the Over brea of Cultilich how the woods there are kept both oak and all kind of timber

[This item is repeated for the tenants of Nether Cultilich, Tomtayewan, Lagg, Pitcairn, Sketewan and Croftspardon.]

To call the Gardiner and ask him anent the parkes and haill enclosours

To call the forster and ask him what he knowes anent the haill wood

⁴⁷ hained; enclosed or preserved from grazing or cutting.

To order the tacksmen of the milles to provid there sume and capones and to see that they be good and suficient and who faillie to send them in as to what ever is payed in the publick markets by Gairntullies servants."

For all infringements of items on these lists the court could enforce specific fines; usually in kind or service but sometimes in cash. These certainly provided the laird with a useful extra income which, had justice been more rapidly centralised, would otherwise have gone to the church or local and central government.

Despite the fact that most of the court's time was taken up with business relating to the smooth running of the estate, it had much wider powers. In civil matters its jurisdiction⁴⁸ covered actions relating to debt, possession, lawburrows,⁴⁹ breach of arrestment,⁵⁰ bloodwite and deforcement.⁵¹ Whilst its criminal jurisdiction had originally covered theft and slaughter, with time some of these jurisdictions fell into disuse, particularly as justice was centralised into the higher courts and institutions. Indeed, by the seventeenth century only regalities or earldoms could enforce capital punishment.⁵² Thus, slaughter and, to some extent, theft were

⁴⁸ Walker, D M (1969) *The Scottish Legal System*, p132

⁴⁹ Surety for keeping the peace. Caution was given by one individual on behalf of another.

⁵⁰ Arrestment is the process of arresting. In Scots law arrestment applied only to property not to people (who were apprehended) and involved taking or attaching the property of another, the debtor or defender, into the hands of a third party.

⁵¹ Crimes consisting of resistance to officers of the law whilst executing their duty in civil matters.

⁵² Walker, D M op cit, p132

withdrawn from the competence of the baronies.

Debt, however, remained within the jurisdiction of the baron courts some of which probably gained in power during the fifteenth century,

"...they were probably left alone to run their baronies - within which...they would have presided over most of the ordinary government and justice experienced by most of the people of Scotland."⁵³

Certainly, those baron court records which have survived substantiate the view that litigation relating to petty or small debts incurred by Scotland's peasantry were dealt with by these courts. 'The Minutes of the Baron Court of Stitchill' are annotated in the page margins with titles, and sometimes the value, of each item being considered. Even a cursory inspection of these disclosed that around one tenth of the entries were entitled 'debt'. On closer examination it is apparent that these cases merely refer to debts incurred in cash. Outstanding fees, sales, etc are not labelled as debts. For example, an entry in January 1681 is recorded as 'Cordiner 2 pair shoes 58s. 8d.' but the claim reveals a typical debt/credit transaction:

"The qlk day Robert Lillie smith in Stitchell is judicially decerned to make payment to John Dickson cordiner ther the soume of 58sh. 8d. Scots money as the worth and pryce of two pair of shoes bought and received by the said defender from the Compleiner about 2 years

⁵³Grant, A (1984) Independence and Nationhood: Scotland 1306-1470 , p151

since or thereby....."^{5 4}

In fact a high proportion of the business of the court dealt with adjudging claims against debtors of one form or another.

With no extant baron court records for the Grandtully estates, it is impossible to compare the claims made at those courts with those of the commissary court. Nevertheless, a survey of the baron court records of Stitchill and Urie strongly suggests that the type and value of claims being made were broadly similar to those recorded in the small claims processes. The only significant differences lying in the inclusion of a higher proportion of transactions involving merchants and artisans in the latter.⁵⁵ This is merely a reflection of the distribution of these two groups in the area; almost all merchants and a large proportion of artisans lived in Dunkeld and were, therefore, outwith the jurisdiction of the baron courts. By 1729 Dunkeld is recorded as containing:

35 victuallers (nearly all of whom were
brewers)

3 distillers

4 maltsters

10 tanners (all were shoemakers)

3 tawers or dressers of alum skin

1 chamois or oil skin dresser (also a
glover)

2 candlemakers⁵⁶

54
55 *ibid*, pp90-1

55 Very small debts for items or cash would never have featured in any of the court records as it would simply not have been worth taking action against them.

records as it would simply not have been worth taking
56 McLean, C (1879) Dunkeld: Its Straths and Glens, p31

Of all the transactions recorded over 28% included a participant from Dunkeld. For each of the four estates the figure was; Grandtully 21%, Murthly 35%, Strathbran 28% and Airntully 4%. The very low figure for Airntully is partly a reflection of the short run of data available for that estate and of its geographical location - facing south towards Perth. It is, however, also a reflection of the choice of courts available.

For the population of the other three estates, Dunkeld commissary court was the most convenient choice of court if the baron court was either not competent or was suspected of some form of bias. There had long been a preference amongst the Scottish population to go to the highest court possible. Even in the fourteenth century "Legislation impotently tried to stem the flood of litigation to the centre by repeatedly declaring that cases should first go to local judges."⁵⁷

Two main factors fed this flood, first the frequent ignorance of the sheriff, or his proxies, of the law and its correct implementation, and second, the high potential for bias and bribery in a court whose sheriff, officers and jury were all local. Dickinson, drawing from a fourteenth-century chronicle, describes a system of,

"judges ignorant of the law, partial and venal, of delay

⁵⁷ Milne, I A (1958) *The Sheriff Court Before the Sixteenth Century*, in *An Introduction to Scottish Legal History*, The Stair Society Chap XXV, p354

of justice and of neglect in execution".⁵⁸

By the sixteenth century he argues that little had changed, despite the Education Act of 1496. That Act was an attempt to ensure that all barons and sheriffs had a knowledge of the law. As these positions were heritable the Act sought to ensure that all eldest sons, who would inherit such offices, were appropriately qualified in law. It seems to have met with little success and, in any case, the vast majority of court business was dealt with by sheriff-deputes, not the hereditary sheriff himself; no provision for the sheriff-deputes to be educated in law was made until the reign of George II, after heritable jurisdictions were abolished.⁵⁹ In 1551 a litigant at Perth sheriff court protested against the sheriff and his deputies. His action he said was 'greit and wechty' and required,

"men of witt, knowledge and understanding quhilkis can nocht be had in the sheriff courts of Perth, the sheriff and his deputies [being] of ower small knowledge and understanding"⁶⁰

These fundamental problems were not really overcome until the abolition of the heritable jurisdictions in 1747.

Therefore, whenever possible litigants would go to the court that was not only convenient and competent but also offered the highest expectation of success and

⁵⁸ Dickinson, W Croft (1928) The Sherrif Court Book of Fife 1515-1522, SHS 3rd Series Vol XII, pciii

⁵⁹ The Records of the Proceedings of the Justiciary Court 1661-1678, Moncrieff, W G Scott (ed), px

⁶⁰ Acta Dominorum Concilii in Public Affairs 1501-1554 (1932), p610

impartiality - where the two were not mutually exclusive. Apart from the Baron and Commissary Courts, the Regality Court of Dunkeld and Perth Sheriff Court were both available for the pursuance of claims for people living on the Grandtully estates. The Duke of Atholl was both Lord of the Regality and Sheriff: however, the ordinary business of the courts was dealt with by his appointed deputes.

In theory these courts were of a different order of importance. The Sheriff Court was competent to hear criminal cases relating to manslaughter, if the slayer was caught 'red handed', and to theft, if the thief was caught in possession of the stolen items.⁶¹ It was also a court of appeal from the baron courts within the sheriffdom. The most commonly heard cases concerned: spuilzies,⁶² cognitions,⁶³ obligations,⁶⁴ contracts, debts, removings,⁶⁵ loosing of arrestments⁶⁶ and brieves of inquest.⁶⁷ The Regality Court, on the other hand, was competent to try the four pleas of the crown - rape, murder, arson and robbery - and numerous other actions

⁶¹ After 1735 any case of theft could be heard without the proviso of being caught 'with the fang'.

⁶² Theft or the taking away of moveables from another against his will.

⁶³ Usually involved determining the insanity of an individual and appointing a curator.

⁶⁴ Basically cases of debt; debtor being the obligant and creditor being the obligee.

⁶⁵ Tenancy cases normally concerned with the expiry or detailed adherence to lease clauses.

⁶⁶ The release of individuals from apprehension.

⁶⁷ A brieve was a warrant authorising an inquest by a jury into various subjects such as the appointment of a tutor, or the definition of a widow's terce (third).

including spuilzie and ejection, excessive sub-letting of land, marriage without consent etc. The only crime which did not fall within its jurisdiction was treason. Nevertheless, Leneman's study of the Dunkeld regality court records suggests that most of the business was concerned with "commercial, moral or practical issues".⁶⁸ She found few criminal cases and those which did appear were usually quite minor: poaching, burglary, cursing and drunkenness. Other cases included petty theft, debt claims, assythement and lawburrows - all of which could also be heard in the Commissary and Sheriff Courts.

This continual inter-weaving of court jurisdictions makes it almost impossible to view the treatment of one type of action as a whole. The four courts described all heard claims for small debts (not only monetary). This almost certainly explains why the Airntully data set is so short. It is likely that the inhabitants of that estate took their debt actions to Perth Sheriff Court. Not only does the area lie within 7½ miles of Perth, most of the debt claims known were in fact with individuals who lived to the south between Airntully and Perth. This suggests that the economic focus was southwards into the richer arable land of Strathord and along the river Almond. Unless an individual had good reason for going north across the much steeper and wetter terrain, to

⁶⁸ Leneman, *l op cit*, p154

Dunkeld some 6 miles away, the obvious choice would be Perth. The small debt court books for Perth Sheriff Court have not survived from the period under study so it is impossible to verify whether this is the case. It seems the most likely explanation, but it is possible that Airntully had its own baron court which was functioning efficiently and was perceived to be impartial, thus leaving few cases to be heard elsewhere. As is so often the case, the answer may lie in a combination of these possibilities.

Finally, the higher centralised courts must be mentioned. Obviously any of these courts were competent to hear cases relating to debt or claims for damages. Their actual jurisdiction notwithstanding, few small claims cases ever reached these courts unless the litigants lived in the vicinity of Edinburgh. In an age of poor transportation and communications, undertaking lengthy journeys and the expense of staying in Edinburgh to pursue a small outstanding debt was simply not practical. The Justiciary Court, although based in Edinburgh, was theoretically supposed to implement a system of circuit courts in 1672. In fact none was held until 1708 and then on a limited scale. Cases of indebtedness were heard in the Justiciary Court but almost all related to formal loans made by bond.

Certain cases which feature in the justiciary records

could have been heard in the lower courts; particularly those which concerned the payment of damages for injury of slaughter. Such a case was heard by the Justiciary Court in 1664:

"Walter Drummond at the Mill of Menstrie, incarcerate in the Tolbooth of Lithgow for the alledged Slaughter of David Crawford of Kilbryd, upon his Petition to the Justices representing that he had purchased a Remission and had assythed the Parties, obtains a Warrant to the Magistrates of the said Burgh to sett him at liberty so being he is not arrested for any other Cause therein".⁶⁹

Not only does this example offer yet another method of using the assythement system, the case could equally well have been heard in the Regality Court. Nevertheless, despite the tendency of litigants to aim for the highest judgement possible, the overlap between central and local justice was, by the beginning of the seventeenth century, more an ambition than a reality.

⁶⁹ Justiciary Court Proceedings op cit, p109

Chapter 6: Data Analysis and Discussion

6.1.1: Barter, Exchange Values and Prices

Having discussed the form and background of the two documentary sources, the data themselves can now be considered. The following section examines the value of these data in terms of the prices quoted within the testaments and small claims, their relationship with identifiable price levels of the day and the consequent effect of that on the possible interpretation of the credit market.

At face value these data should offer a valuable source to historical geographers and economic and social historians, particularly those studying prices and wages. However, their value as a source depends both on their form and content - despite both the testaments and the small claims processes offering numerical data sets with which to work, the figures are in certain respects highly artificial and, as is shown below, lie outwith the formally recognised price structures of the seventeenth- and eighteenth-centuries.

In the vast majority of the small claims and a proportion of the testamentary debts, the items or transactions only receive a monetary value after they enter into the legal arena. Amongst testamentary debts this proportion is lower, as many can be classified as official (Type 4) or cash loans (Type 6) and are, therefore, usually incurred

in financial terms. There are some exceptions. Official debts; rents, duties, grassums, teinds, cess etc are almost invariably listed in terms of their value, but even they were not always paid in cash. Rents, in particular, almost always contained an element of both cash and kind - the latter frequently forming the larger component part. Yet, it is not unusual to find only a value listed for outstanding rent payments. Nevertheless, it is possible to assume in such cases that the conversions used were fairly standard. These conversions were often recorded when the income from a rental was totalled. For example, in 1725 the total income of rent from the Grandtully and Strathbran Baronies was calculated on the following unit conversion:

boll bear	:	£6.05.6
boll meal	:	£6.05.6
goose	:	£0.12.0
poultry	:	£0.03.4
reik hen	:	£0.04.0
peat load	:	£0.01.0
kid	:	£0.13.4
butter chopin	:	£0.06.8
straw turse	:	£0.02.0
heather turse	:	£0.01.0
wedder	:	£2.00.0 ¹

This consistency and standardization ensured that the values entered by the executor were accurate; these figures could too easily be checked by the commissary's officers or the laird's factor, to encourage dishonest reporting.

¹ SRO GD121/42/224/20

The valuation of other items outstanding in debt/credit transactions must often have been a compromise between the executor and the debtor or creditor - particularly if no prior written or witnessed agreement had been made which could be proven without the presence of the testator. Finally, it is worth noting that many of the debts listed in testaments are not dated with the time of incurrence hence the valuation cannot be judged against the market or estate prices (see below) prevailing at the date of the inventory. This is particularly important in relation to grain crops and other foodstuffs which experienced wide annual fluctuations (see below).

Material goods listed in inventories were also given a value by the executor (5.1.1). Except in cases where the goods had been sold at a roup,² and their sale value is known, these valuations must be dealt with at face value whilst their limitations are borne in mind. The documents themselves admit the possible inaccuracy of these figures with the recurrent phrase 'estimat to'. Valuations of furnishings, clothing and the like are obviously approximations and must be dealt with as such. Entries such as "The oversight and insight plenishings Plough and Plough graith with the habulziements of the Defuncts

² Sale by public auction.

body"³ estimated to £10, in an inventory which totalled £312.0.8, is clearly an approximate 'round figure'.

A similar situation prevails in the use of the small claims data. With the exception of bills, bonds and cash loans in particular, the transactions represented by these data would rarely have been agreed in monetary terms (unlike the majority of recorded testamentary debts). Exchanges in kind would have been the norm, financial valuations sometimes never being stated until the case was taken to law. Occasionally a claim was actually made in terms of the original exchange agreement: David Soutar in Orchardnook of Lethendy claimed, in June 1735, against Thomas Scott in Kerco for,

"One boll thrie pecks bere as the remains of the price of an ox bought and receaved by the s[ai]d Thomas Scott from me within these four yeirs".⁴

The claim is, nevertheless, valued as £7.18.4.

Another example illustrates that although an agreement may have been made in money terms the actual payments, both before and after going to law, were made in kind: In 1710 John MacFarlane in Kinloch brought an action against John McDuff in Balinloan.⁵ He claimed that the defender's father, Andrew, owed him "twentie eight merks of fie and bountie" and stated, that of that he had been

³ SRO CC7/6/2 The testament of Elspeth Thomson who died in June 1715 in Brae of Cultilich.

⁴ SRO CC7/3/51(2)

⁵ SRO CC7/3/25(3)

paid half a boll of oats and a half boll of bear, therefore, 18 merks were resting owing. On the case being taken in front of the commissary John McDuff paid the pursuer another half boll of bear which John MacFarlane "accepted in full payment of the fies merely out of charity".

The apparently more straightforward cash loans made through the vehicles of notes and specie, bills, bonds or promissory notes can, however, also pose a similar problem. Although the original loans in these transactions were made in precise monetary terms, this took no account of the repayment. These must frequently have been made in kind, over a period of time, and in several 'installments'. Unfortunately this method of discharging debts is rarely recorded although one example from 1745 indicates how complex it could become.

In December 1735 James MacFarlane in Meikle Findowie had borrowed £20, contained in a bill, from Patrick Cameron in Little Trochry. Cameron, the creditor, was a comparatively wealthy tenant of one horsegang which he held in liferent tack and for which he had paid a grassum of £100 - also in 1735. At the time of this action, ten years later, he was pursuing other claims, in the same process, which totalled £28.0.0. From James MacFarlane (whose social status is not certain, but seems to have been a servant of some kind) Cameron was claiming a total

of £34.12.2. This figure consisted of two items. The first being the £20 bill - Cameron's claim was for £22.5.6 plus one fifth expenses (costs). The extra £2.5.6 comprising the unpaid annual rent for the ten year period. The process contains a deposition from MacFarlane in which he asserted that he had made the following payments against the outstanding principal:

Imp. By 24 ells while ⁶ cloth at 8d per ell	9.12.00
By 3 pair shoes at 1 mk a pair	2.00 00
By a speinle ⁷ of yarn on a long reel	1.10.00
By making a horse hide in shoes	0.16.00
By an ell of hodine ⁸ cloth at	0.16.00
By a cheeser sold him at	0.12.00
By an halfe stone lint at different times at	1.10.00
By a womble ⁹ at	0.03.04
	<u>£16.09.04</u>
	(sic)

An additional two entries for:

"7 flakes¹⁰ 2 of them at sixpence 2 of them at 5 pence and 3 of them at 4 pence" and a "tartan at fourteen shillings",

had been deleted.

The second claim against MacFarlane provides another example of payment in kind, in this instance, of a fee and of annual rent. The claim is apparently a straightforward loan of 18 Mks 6s 8d "lent to him ten yeirs ago". Again, however, the defender's deposition illustrates certain complexities in the repayment, or at least indirect settlement of the loan. A deposition from

⁶ Cloth woven from coarse worsted yarn

⁷ Spindle

⁸ Undyed, homespun woollen cloth

⁹ An auger

¹⁰ A hurdle or framework of crossed slats

MacFarlane stated that:

"...my Sister in law who served him [the pursuer] some years before her death gave him seven ells 3qts of while cloth upon his promising to give her money or cloth for it again He sold 4 ells of it at St Sarfs Market and the other three was a winding sheet to his wife at her death and that my said sister in law on her death bed desired him to pay my wife the 7 ells 3 quarter when they were both present which he refuseth to do.

Princ.	£3.5.4
He also left my wife 3 ells	
while Camlet	1.0.0
To which add the w[i] ^t [h]in ballance	<u>1.7.0</u>
Sum	5.12.4

Note that I payt six pecks oat meall in full of all the Annul rent he could crave"¹¹

That some of the arithmetic in these claims is wrong does not matter. What they do provide is a clear illustration that not only payment, but agreement, in kind could be, and was, made at every stage of a transaction.

Commercial transactions in kind were not, as has been shown by these examples, necessarily straightforward exchanges of goods. They depended not only on a willingness to trade in kind or labour when required - and that was much of the time - but on the ability to do so. The whole system of bartering without cash could not function unless each participant possessed goods, or the skill to provide a service which the other wanted,

"The butcher has more meat in his shop than he himself can consume, and the brewer and the baker would each of

¹¹
SRO CC7/3/61

them be willing to purchase a parte of it. But they have nothing to offer in exchange, except the different productions of their respective trades, and the butcher is already provided with all the bread and beer which he has immediate occasion for. No exchange can, in this case, be made between them.¹²

Not only was it necessary to offer goods or services needed by others, they had to be offered in a way which enabled a division and exchange acceptable to others. The actual exchange value of an item - that is its purchasing power - could in itself be a bar to trade. Once again the use of credit was frequently the only option.

In a system short of specie or other currency of exchange which could be divided into small, portable units, credit was unavoidable within transactions in kind. Such credit was inevitable for two reasons. First, it was simply not possible or practical to carry certain commodities for immediate use in some transactions. This is clearly exemplified by a claim made in the commissary court in 1745; John Bissat of Mucklarie, the ferryman at Caputh, against Andrew Stirton from Baldornoch. He claimed,

"Six lypees of bear being his boatt fee for ferrying him over the river Tay at Caputh 1741..."¹³

Obviously it would have been highly inconvenient for both

¹² Smith, A (1776) The Wealth of Nations Vol I, p126

¹³ SRO CC7/3/61. This is a remarkably large amount if it is considered that it was a commonly held assumption in seventeenth- and eighteenth-century Scotland that a man needed one peck (4 lippies) of oatmeal a week to live on. Even accepting that bear was heavier by volume than oatmeal 6 lippies seems a very high ferry fare. There may have been a penalty component being charged for late payment (see below) or the man may have been transporting livestock or a large quantity of goods.

ferryman and passengers for such a fare always to have been paid over at the time of crossing the river. Six lipees would have weighed around 27 lbs avoirdupois¹⁴ - not an immense amount but enough to cause inconvenience if other goods were being carried, particularly for those travelling on foot.

Second, the actual exchange value of an item could impede a transaction by being too high. An individual wishing to buy a small quantity of salt - so essential for winter preserving and only available from the external sphere of exchange - could not do so unless he possessed a commodity of equal exchange value. If he only had a cow or sheep to trade he either had to buy a cow's worth of salt and re-exchange the extra salt for other goods, not make the exchange or make use of credit, or if possible pay in cash. He could promise the salt vendor a part of his animal when it was slaughtered, thus deferring payment; offer the whole beast and accept credit for the remainder; or sell his cow for cash or goods which could be broken down into smaller 'currency' units.

¹⁴ The measures of grain used in early modern Scotland - with the exception of oatmeal after the legislation of 1696 - were measures of capacity or volume. Translating these into measures of weight can only be approximate as weight varies with the quality and moisture content of the grain. However, Swinton's eighteenth century attempt to standardise gives a range of weights for a boll of bear from 230lbs $3\frac{3}{4}$ ozs to 345lbs 15oz and gives an average of 288lbs 1oz. With 64 lippies to the boll, each lippy would weigh 4 $\frac{1}{2}$ lbs making 6 lippies around 27lbs. Swinton, J (ed) (1789) A Proposal for Uniformity of Weights and Measures in Scotland, p51

Where cash was not available, and it rarely was in seventeenth- and eighteenth-century Scotland (2.1.1), the exchange value of goods and service was critical. As previously discussed (2.1.1), Scotland's monetary economy was then still fairly chaotic. Nevertheless, the long established terms of accounting - pounds, shillings, merks etc - were known and utilised by the entire population. Thus, even without cash, exchange transactions were made within the comprehension of these terms and items were valued within the framework they provided.

"Most financial transactions were first determined and expressed in money of account, although payments were naturally made subsequently in coin, or surprisingly often in other goods. Coin itself was valued as a commodity in terms of money of account, and, like any other commodity, its value frequently varied."¹⁵

Few transactions would have been recorded on paper at the time of agreement. For most a handshake would have been sufficient. Indeed, in 1730 as the pursuer in a claim, Alexander Rody a tenant in Burnbane used the phrase "because he became debtor and gave me his hand" about the defender, John Pennycook in Wester Caputh.¹⁶ Then, as now, to shake hands was sufficient to seal a bargain and form a social bond. Amongst tradesmen and merchants records were kept. The system functioning in much the same way as that described in the United States in 1791: "Instead of money incessantly going backwards and

¹⁵ Spufford, P (1986) Handbook of Medieval Exchange, pxx

¹⁶ SRO CC7/3/46

forwards into the same hands, it is the practice here for country people to satisfy their needs by direct reciprocal exchanges. The tailor and bootmaker go and do the work of their calling at the home of the farmer who requires it and who, most frequently, provides the raw material for it and pays for the work in goods. These sorts of exchanges cover many objects; they write down what they give and what they receive on both sides and at the end of the year settle with a very small quantity of coin, a large variety of exchanges...."¹⁷

It was certainly the norm for raw materials to be provided by the customer whenever possible; particularly in relation to weaving textiles when the webster would be supplied with spun wool or linen yarn. Other such arrangements were commonplace; the cordiner in receipt of hides would pay for them by making shoes for the supplier, the merchant received tallow which he partially paid for in candles. This type of transaction suited both parties providing, as it did, a market for both the raw material and the finished article. Obviously such arrangements were not always a straightforward interchange of goods and labour - the exchange value of the two commodities being unequal. A claim made in 1725 illustrates this type of imbalance: James Scott in Milton of Deanshaugh had sold John Cameron, a merchant in Dunkeld, 5 quarters of tallow for 52s in 1723. He had received a pound of candles in return but its value was only 4s. Two years later he was still awaiting payment for the remainder.¹⁸ Had Scott's requirement for candles

¹⁷ Quoted by Braudel, F (1979) *The Structures of Everyday Life*, p447, translated from

E Claviere and J P Brissot (1787) *De la France et des Etas-Unis*, p24

¹⁸ SRO CC7/3/40

been greater he would almost certainly have received payment in kind at an earlier time. The inequality of the exchange value of the two commodities - tallow in its raw state and the finished candles - ensured the need for some other element of payment.

Whatever the transaction, a mutual understanding of the exchange value of the commodities by the vendor and purchaser lay at the heart of the compact. Although these values would frequently not have been stated in monetary terms, awareness of them was crucial. The difficulty lies in determining the extent to which the values recorded in the processes and testaments relate to the exchange values accepted by both parties at the time of a transaction, and to the other officially recognised price series.

Of all the commodities valued in the commissary court processes only the prices given for grain, oatmeal and to some extent textiles can readily be tested in this respect, as each of these commodities is measured and recorded in identifiable units - bolls and ells respectively. (Other possibilities such as livestock prices vary too greatly by the type of animal, its age and condition.)

To test whether process prices were related to the formally recognised price scales being used in merchant trade; whether some sort of dislocation was occurring at

the transfer from 'awareness' of monetary value to its actual statement during litigation; or whether an interest or penalty charge was being made for late payment, the small claims prices must be looked at in relation to one of the formal series. The fiars' prices were used as only that series is complete for the requisite period in Perthshire (Fig 5.3). From the fuller series illustrated in Fig 6.1, it is clear that no significant underlying trends in inflation or deflation occurred to influence the level of oatmeal prices between the 1620's and 1790's. Inflation is not, therefore, considered as an influencing factor in the following discussion.

The fiars' prices themselves were set, or struck, each year by the local sheriff in the Fiars' Court and were probably originally intended as a means of determining stipends for ministers.¹⁹ Gradually they became the standard means of translating any obligation, customarily paid in kind, into monetary units. Being assessed in March these prices related to the previous year's crop, that is, the Fiars' price struck in 1761 related to the crop harvested in 1760 (usually termed Crop 1760). They

¹⁹ The precise derivation of the term 'fiars' and the origin of the practice of 'striking' are obscure. The word itself appears to mean market price being derived from the Latin forum meaning market; Littlejohn, D (1906) Aberdeenshire Fiars, Miscellany of the New Spalding Club, Vol 2, p3 & Committee on Fiars Prices in Scotland (1911) Fiars Prices in Scotland, p4. However, as is suggested below, by the early eighteenth century fiars prices were clearly not intended to represent the exact average market price of the different grains for which they were struck.

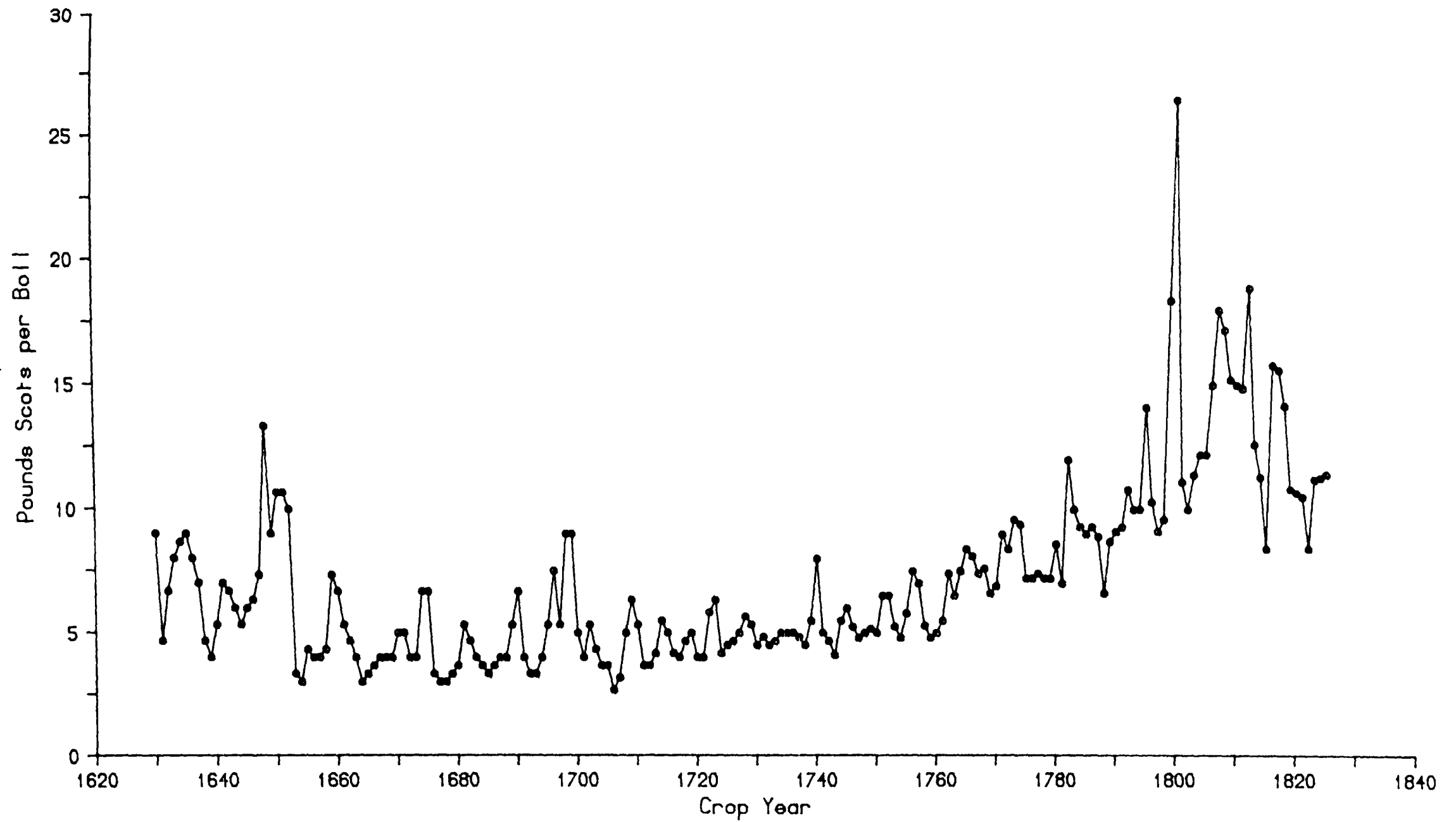


Fig 6.1 Perthshire Fiars' Prices showing no significant inflation during the study period

tended to be slightly lower than those quoted in estate and market records as they were based on the period November to February when, following the harvest, grain prices were at their lowest and because the fiars were wholesale, not retail prices. Nevertheless, recent work by Gibson and Smout suggests that the difference was on average only 10% (Tab. 6.1).²⁰ This figure certainly suggests a close relationship, but as the 10% discrepancy refers to annual average prices it disguises the fact that much higher price differentials existed on a month to month basis. Table 6.1 can only be reliably interpreted as indicating that the Fiars' and Market prices were consistently close in February and March when the former were struck.

Here an important problem of terminology must be considered. As pointed out above, the term 'fiars' means market price, but by the close of the seventeenth century at the latest, the two terms cannot be seen as interchangeable in the Scottish context. Four sorts of prices must be defined here: that of the fiars', the market, estate, and private or spot-market. The definition of these terms is extremely problematic as the relationship between them and their original use and changing usage has not been thoroughly investigated. Certainly each was

²⁰ Gibson, A & Smout, T C (forthcoming) *Wages, Prices and Living Standards in Scotland, 1550-1780*

Month	No. of observs.	Average Monthly Price	Average Fiars' Price	% diff.
January	62	10.01.04	10.03.11	-1.3
February	60	10.02.08	10.04.06	-0.9
March	61	10.08.02	10.06.02	1.0
April	62	10.05.02	10.04.07	0.3
May	60	10.17.01	10.10.02	3.3
June	62	11.01.00	10.10.01	5.2
July	64	11.02.09	10.09.00	6.6
August	63	10.17.04	10.09.06	3.7
September	63	11.02.01	10.09.10	5.8
October	64	11.08.10	10.10.00	9.0
November	64	11.02.09	10.10.10	5.7
December	63	10.14.09	10.08.06	3.0

Table 6.1 Monthly Fiars' and Market Prices for First Wheat -
Haddington 1721-1796

an understood concept but how rigorously they were either specified or, more importantly, adhered to remains largely uncertain.

The fiars' price has already been mentioned. It was certainly significant in establishing stipends and also, by the early nineteenth century, rents had become linked to the annual fiars for wheat.²¹ Also, as shown in Figure 6.1, an increase of approximately 10% on the fiars' price is apparently a fairly useful guide to the price at which oatmeal could be bought in the market place.

This, however, begs the question of which market place. The 10% discrepancy between fiars' and market prices relates to the officially recognised markets, the markets which were run by burghal authorities or bailies in local courts. The officially recognised transactions at these markets usually involved merchants (specifically, in this context, grain merchants) or artisans as at least one of the parties. It was at these markets that some control was kept on prices as happened on January 4th 1701 when the Bailies of Dunkeld Regality Court "turned their attention against the free trade of meal and enacted that the 'Pryces were not to be raised between two weekly markatt days'".²² These were the retail tariffs quoted

²¹ Devine, T M (1978) *Social Stability and Agrarian Change in the Eastern Lowlands of Scotland, 1810-1840*, Social History Vol 3, p341

²² Stewart, E (1979) *Dunkeld: An Ancient City*, p22

as market prices in contemporary literature.²³

The third set of prices was set within estate units. Sometimes these were systematically recorded as happened on the Buchanan Estates in Stirlingshire. Graphed against the Fiar's prices of the time (Fig 6.2) it is clear that the two sets of data are closely related. Estate prices were generally slightly higher than the fiars', but the two series fluctuate in unison.²⁴ It also seems that the estate price was often higher than the market or current price. In 1683 the Earl of Strathmore recorded that,

"I usually sell a quantity of bear more or less to my own brewars everie year at 13sh. 4d. of the boll att least more then the current rate...."²⁵

The remaining prices were those agreed in the 'spot market', in private deals made directly between producer and consumer without recourse to a merchant, laird, factor or other middleman. These are the prices which frequently appear in the small claims records used here. They relate to small transactions between individuals who

²³ The monthly market prices for Haddington being particularly noteworthy in this respect as they were published in the Scots Magazine from 1741 onwards.

²⁴ Stirlingshire fiars' may have been more reliable than those from other counties as a book recording transactions in the market was kept to help the jury, who struck the fiars', to decide on the level. Mitchison, R (1965) The Movements of Scottish Corn Prices in the Seventeenth and Eighteenth Centuries, Economic History Review 18, p279

²⁵ Miller, A H (ed) (1890) The Book of Record, A Diary Written by Patrick, 1st Earl of Strathmore, 1684-1689, SHS, pl. Later in the same entry he writes of the 'current price in common mercats'.

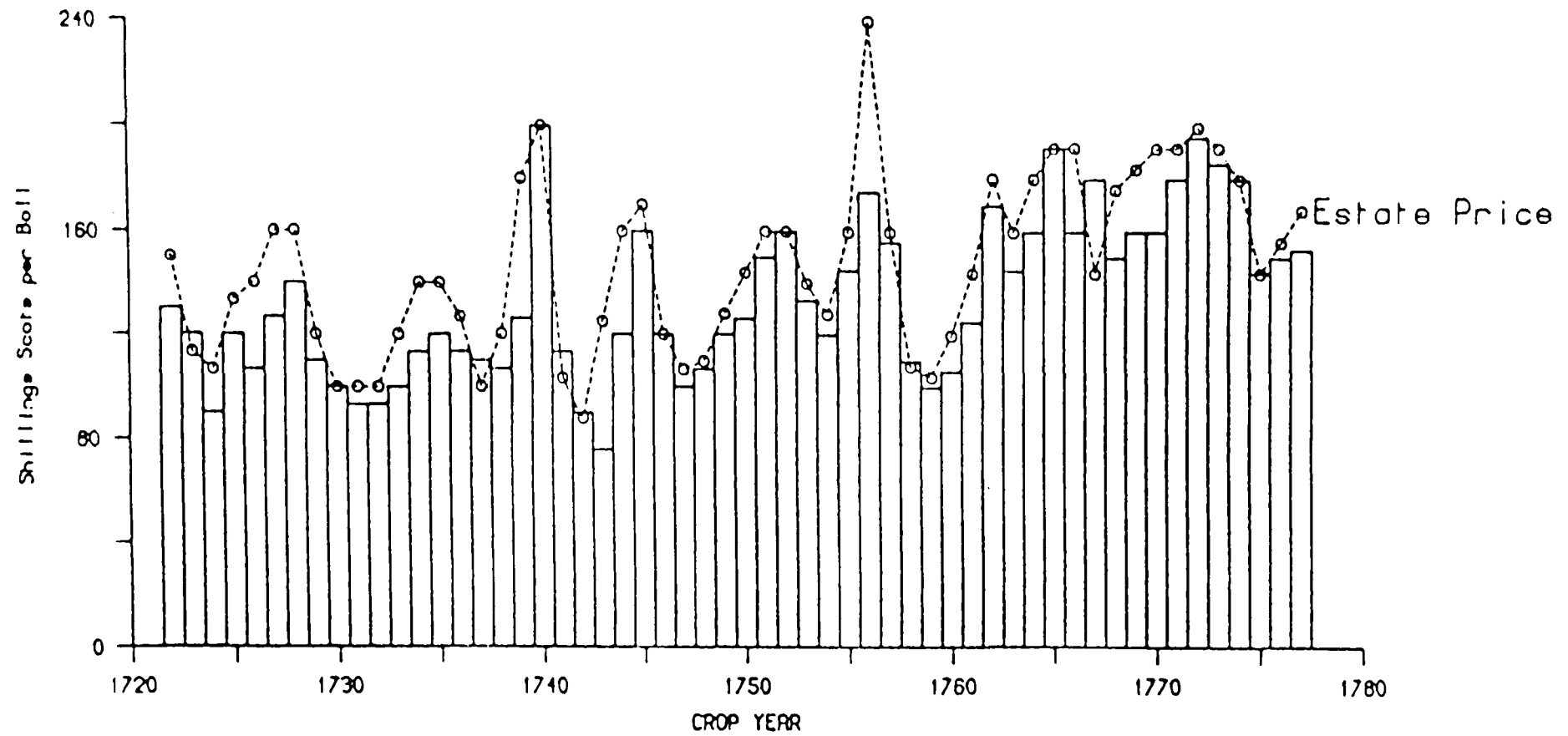


Fig 6.2 Buchanan Estate Oatmeal Prices and Stirlingshire
Fiars' Prices, 1720-1780

may have met at a market but could equally be neighbours, friends or acquaintances who agreed a deal and price wherever they happened to meet. As previously noted (4.2.3), markets and fairs were an obvious choice of location for meeting and bargaining but this is not to suggest that they had any exclusive hold on small scale trading.

Therefore, the questions posed above concerning the value of the data extracted from the records must be seen in the context of these different purchasing circuits. However, by extracting all the oatmeal prices from the process data it was possible to compare them with the fiars series. Only those claims which gave a valuation for a specific amount of meal could be used. Non-specific references to 'the remainder of a boll of meall resting owing' or combined claims for meal and another item were discarded. Those claims which did not specify when the debt was incurred were also ignored.

There remained 95 claims which were sufficiently precise. A check was made to ascertain that the valuations placed on these were not related to the fiars' prices of the year in which the claim was being made; in each year, containing more than one claim which had resulted from debts incurred in different years, the valuations were found to be totally unrelated, either to one another, or to the fiars' prices of the claim year.

The 95 values were tabulated against fiars' prices for the appropriate years (Tab. 6.2) - in most cases the crop year of the meal being claimed was specified in the process. In 84% of cases the claim for payment was brought within two years of the debt being incurred and on average claims were 38.7% higher than fiars' prices. Even allowing for a maximum of a 10% difference between fiars' and market prices, due to annual price fluctuations, this suggests that either: a very high price was normally being charged by individuals selling, a heavy penalty was being extracted from those who failed to repay according to the agreed period, or the debt was overstated in the claim in an attempt to profit or break even if the whole was not decerned.

Although the average is close to 40%, the range of differences extends from a third less than the equivalent fiars' price to 124% more. There is a strong modal value of 58% with two-thirds of the differences lying between 30% and 64% but a third of the cases lie outwith these limits.

The two sets of figures do not demonstrate any obvious long term relationship. In only 5 cases is the difference less than 10% and hence the remaining 90 indicate that vendors were extracting prices higher than the accepted market prices for their meal. Fig 6.3 further emphasizes the point illustrating as it does that the two sets of

Date of Flars/Debt Incurrence	Flars Price	Claim Price	Difference	% Diff	Y	No
1686	3.06.08	5.13.04	2.06.08	70.0	2	3
1687	3.13.04	6.00.00	2.06.08	63.6	1	5
1690	5.06.08	8.00.00	2.13.04	50.0	-	3
1697	7.10.00	9.00.00	1.10.00	20.0	-	1
		9.00.04	1.10.04	20.2	3	1
1706	3.13.04	4.06.08	0.13.04	18.2	4	1
1708	3.03.04	5.00.00	1.16.08	57.9	12	1
		5.13.04	2.10.00	78.9	2	1
1709	5.00.00	7.13.04	2.13.04	53.3	1	1
		8.00.00	3.00.00	60.0	1	1
		10.00.00	5.00.00	100.0	11	1
		10.13.04	5.13.04	113.3	1	6
1710	6.06.08	5.00.00	-1.06.08	- 21.0	10	1
1712	3.13.04	6.00.00	2.06.08	63.6	8	1
1714	4.03.04	6.08.00	2.04.08	53.6	1	1
1715	5.10.00	8.00.00	2.10.00	45.5	-	1
		8.00.00	2.10.00	45.5	6	1
1718	4.00.00	7.00.00	3.00.00	75.0	2	3
1720	5.00.00	5.00.00	-	0.0	-	1
		7.00.00	2.00.00	40.0	-	1
		8.00.00	3.00.00	60.0	-	1
1730	5.06.08	6.13.04	1.06.08	25.0	-	1
1733	4.10.00	7.00.00	2.10.00	55.5	2	1
1734	4.13.04	7.06.08	2.13.04	57.1	1	14
1735	5.00.00	11.04.00	6.04.00	124.0	1	1
1737	5.00.00	3.06.08	-1.13.04	-33.3	3	1
1738	4.16.04	6.13.04	1.17.00	37.9	2	3
1739	4.10.00	7.00.00	2.10.00	55.5	1	1
		6.13.04	2.03.04	48.2	1	2
1741	8.00.00	12.00.00	4.00.00	50.0	1	1
1743	4.13.04	6.13.04	2.00.00	42.9	2	1
1744	4.02.00	5.00.00	0.18.00	22.0	1	1
		5.10.00	1.08.00	34.1	1	2
1745	5.10.00	6.00.00	1.10.00	9.1	1	2
1749	5.00.00	7.00.00	2.00.00	40.0	2	5
1750	5.02.00	6.00.00	0.18.00	16.1	-	1
		6.12.00	1.10.00	27.7	1	1
		7.00.00	1.18.00	35.5	1	1
		7.10.00	2.08.00	45.2	-	1
1751	5.00.00	10.00.00	5.00.00	100.0	4	1
1752	6.10.00	8.00.00	1.10.00	23.1	3	1
1753	6.10.00	6.00.00	-0.10.00	-7.7	7	1
1759	5.06.00	6.00.00	0.14.00	13.2	2	1
		6.08.00	1.02.00	20.8	2	1
1760	4.16.00	7.00.00	2.04.00	45.8	3	1
1761	5.00.00	6.12.00	1.12.00	32.0	2	1
		8.00.00	3.00.00	60.0	2	1
1762	5.10.00	6.00.00	0.10.00	9.1	1	1
		7.04.00	1.14.00	30.9	2	8
		7.13.00	2.03.00	39.1	2	1
1763	7.08.00	7.10.00	0.02.00	1.4	1	1

$$x = \overline{38.7}$$

$$\overline{95}$$

Y : Number of years between debt incurrence and claim

No : Number of claims

Table 6.2

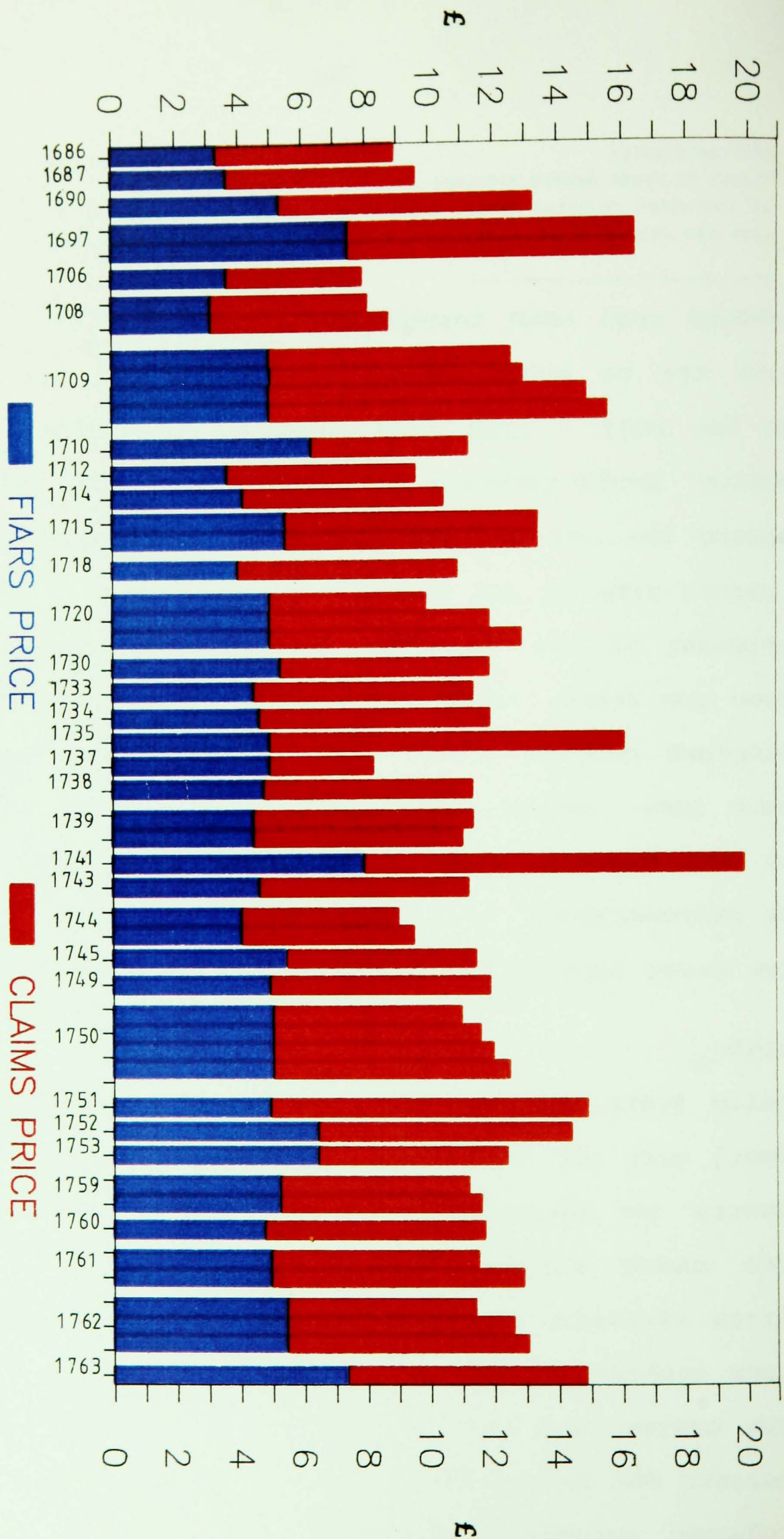


Fig 6.3 The Relationship between the Fars' and Small Claims Price of a boll of Oatmeal

figures were related in so far as they fluctuated together through time. With only minor deviations the pattern set by the fiars' prices was followed by that of the claims with only the degree of difference between them varying. A comparison of monthly fiars' and market price variation (which were sometimes much greater than the annual average of 10%, particularly in times of dearth, for instance in 1741 when harvests were extremely poor) with the discrepancies between process prices and Perth fiars' did not show up any significant relationship.²⁶

The broad variations in difference are open to a number of explanations. A fiars' price relates to the 'first' or best grain or meal whilst a claim may relate to meal made from 'second' or 'third' oats - this would most probably explain those claims prices which were lower than the fiars' (plus 10%). The results are powerfully affected by one individual's behaviour because of the limited size of the sample. For example, in July 1709, before the oat harvest when meal would have been most scarce, Mungo Campbell of Kinloch sold meal for £10 13s 4d per boll - 113% more than the set fiars' price.²⁷ Only six of those to whom he sold meal are recorded because they were subsequently unable to pay, but even

²⁶ This was tested by Dr A Gibson, Department of Geography, University of Exeter who is presently studying fiars' prices as a part of a wider project on wages and prices in early modern Scotland.

²⁷ SRO CC7/3/25(1)

this small number becomes an important feature in the recorded data. The charging of particularly high prices or interest rates clearly features in the data although it is not possible to tell why people were willing to pay these apparently exorbitant rates. In this sample the high prices do not appear at times of particular dearth nor do they reflect the duration of the period between incurrence and litigation.

Despite the shortcomings of the data they do nonetheless strongly suggest that a penalty or interest component was being charged. Even allowing for a 10% disparity between fiars' and market price, over 90% of the cases record a meal price higher than the expected market level, in most cases substantially higher. As it seems unlikely that purchasers were unaware of market prices they would presumably not have agreed to prices some 50% or 60% higher. Only in cases of need caused by shortage of the diet staple, oatmeal, would this behaviour be explicable. However, as these high prices do not coincide with times of general dearth and occur throughout the entire period, this does not seem to offer a solution. Therefore, it must be assumed that either some sort of interest/penalty rate was agreed at the time of purchase; such a penalty was the accepted norm; or that it was common practice to make such high claims at law in the hope of receiving only a portion of the amount claimed. The latter seems

unlikely for two reasons. First, it is extremely rare for the defendant to dispute the value of the claim in terms of the price of an item and second, when expenses or penalties were allowed by the Commissary they were stated separately. (Interest as annual rent was only stated in cases of loans either on cash, bill or bond). A component of hidden interest or, more likely some sort of penalty payment^{27a}, is certainly indicated but a much larger sample focussing on grain prices would be required to identify whether or not there are any significant trends or levels. Were pursuers claiming a higher figure than that which had been agreed? Did the valuations include a component of penalty or hidden interest? The evidence suggests that the most likely of these was a penalty payment, but no written evidence of this appeared in the claims examined. One indication that this is the correct interpretation comes from the Earl of Strathmore's Book of Record in which he wrote,

"...the pryce accorded on with those in and about the toune of Glamis is £5.6.8 per boll [bear] and those few of them who payed readiest money hes 13sh. 8d. of ease in the boll".²⁸

If this was accepted practice at estate level there is every reason to assume that the peasantry also applied such a system among themselves. Economic practices varied little across social boundaries, they merely varied in size and means of exchange. A tenant charged

^{27a} Such penalty payments were also surmised by James Brown in his study of money-lending in the first half of the seventeenth century. Brown, J J (1985) *The Social, Political & Economic Influences of the Edinburgh Merchant Elite, 1600-1638*, University of Edinburgh Ph D, particularly p235 & p70

²⁸ Millar, A H (ed) (1890) *op cit*, pl

his sub-tenant rent as he was charged rent by the laird.

As a tool for the study of debt, the testaments and processes remain useful. The data in these sources still indicate the level of debts, the reason for debts and the location of the participants. The processes do not, however, seem to offer a useful indicator of prices and are therefore their potential application is severely limited. If wider studies were undertaken it may be possible to establish whether the payment of a late-settlement penalty was the norm and if there was an accepted means of calculating it.

6.1.2: Testamentary Debt Data

The following sections, 6.1.2 and 6.1.3, examine the data extracted from the testaments and small claims processes. For the most part the two sources have been considered separately. However, whilst section 6.1.3 is largely concerned with the process data, an element of comparison between the two sources has been integrated into it. Throughout both of these sections (and 4.2.1 & 6.1.1) data from the Estate Index have been incorporated wherever they are relevant.

The testamentary source base for this study proved to be disappointingly scant. Only 101 extant Testaments were found which fell within the study area and period. Nonetheless, by using the agglomerated data extracted from these documents it has been possible to identify both geographical and functional trends and relationships. The former being extracted from the intrinsic need for communication in the incurrence of a debt and the latter from the actual function of the debts themselves.

The testaments were distributed between the Estates as shown below (Tab 6.3). The bracketed figures indicate the number of documents in which debt transactions were actually recorded ie in just over 91% of the testaments.

	Tests.	No. of Debts	Av/Test.
Grandtully	31 (29)	77	2.5
Strathbran	30 (29)	183	6.1
Murthly	32 (28)	190	5.9
Airntully	<u>8</u> (6)	<u>31</u>	<u>3.9</u>
	101	481	4.4

Table 6.3 Number of Testamentary Debts

There was a strong bias in the 92 testaments which recorded debts, towards the testator being a creditor only:

Testator as Debtor	21
Testator as Creditor	52
Testator as Both	19

In other words, as a percentage of all testaments examined, 39.6% recorded the testator as a debtor and 70.3% as a creditor.

This may well reflect the fact that people put their affairs into order before dying; they paid, or organised the payment of their debts but were, if ill, in a weak position to call in outstanding payments due to them.

These figures may equally be a consequence of life-cycle characteristics; as people grew older, lost their ability to earn and became economically poorer, the credit market would be less willing to accommodate their needs. The parallel situation still exists today; building societies and loan companies being unwilling to lend to elderly people with no earning power. On the other hand, for

those elderly people who had managed to save a small amount of surplus cash, the credit market offered one way in which they could continue to earn (6.1.3).

As testaments do not often specify the age at which the testator died it is not easy to identify whether there is a trend towards greater or lesser indebtedness with aging. However, certain aspects of life tended to enforce greater risk taking and easier credit early in the life cycle. A petition made to John Steuart of Grandtully in 1763 by Margaret Menzies, the widow of Joseph McIldonich late tacksman in Sallachill illustrates the culmination of her misfortune;

"...That whereas my said husband dyed about five years ago was a young man and on account of his having paid a large sum of Entry for his Tack happened to have more debt than free Gear, all his Creditors used Dilligences and Seized upon all his effects by which means I was quite destitute and with Child of a daughter who is now four years of age and somemore and I am likewise confined to take care of an old woman past seventy years of age who is my Mother and has been bedridd for two years past and cannot turn or right herself without my assistance. May it therefore please your honour to consider my condition and recomend me to get some assistance...."¹

Her husband's tack² and testament³ are extant. The liferent tack issued at Whitsun 1758 - less than a year before his death - shows a grassum⁴ payment of £133.6.8. The testament details the 'goods and gear' sold at roup⁵

¹ SRO GD121/43/230/(6)

² SRO GD121/87/1/15(8) & GD121/87/1/18

³ SRO CC7/6/5/437

⁴ Payment made on entry to a lease or tack.

⁵ Public auction

(Appendix 6) which illustrate a materially comfortable household. £286.13.2 was materialised from the sale. From the testament the outstanding debts totalled £160 3s leaving, therefore, an outstanding balance of £126.10.2. On the face of it his widow and child should not have been destitute. However, an attached description of the diligence⁶ exacted by McIldonich's creditors by means of a *decree cognition*,⁷ shows that not all of the outstanding debts were recorded in the testament. Twelve debts are listed, only one of which is duplicated in the testament. The complete list of debts totalled £284.9.0 plus various unspecified amounts of outstanding annual rent. The reason for Margaret Menzies's subsequent petition, therefore, only becomes apparent with this second layer of evidence.

Most of McIldonich's debts comprised bills accepted by him from various people, the price of two horses, a merchant debt and two sets of unpaid wages. Assuming that he had paid his grassum in full (there is no evidence in the tack or register of tacks to suggest he had not), the other debts can largely be explained. All except one was incurred after entry to the tack which suggests that he was using credit to subsidise the running of the farm after making such a large, probably cash, payment to the laird. As a 'young' man he would

⁶ The execution, or carrying out of, a decree against debtors.

⁷ A decree given at law recognising the justice of the plaintiffs case.

have expected to repay the debts over the following seasons as the return on his investment was realized from crop harvests and livestock.

Apart from elucidating a possible limitation of testamentary data, this set of documents exemplifies a situation which would simply not have occurred to people in later life. The renewal of a tack for an elderly tenant was almost inevitably done 'on the life of' someone younger - usually a son or brother, or was given to someone else:

"The Petition of Patrick Stewart late Tenent in Croftcatt now Cottar in Donickvourick

Most Humbly Sheweth

That my father was a tenent of a plough of land in Croftcatt and he and I possessed the same during his life and at last when my father came to old age the possession was lett to another and when my father died I was turned out and nothing for me but poor cottages and as I had no Labbouring nor Sowing the little that I had of means Spent away..."⁸

Unlike Joseph McIldonich, Patrick Stewart, the petitioner in the above example, would have found it almost impossible to get credit. At the time of the petition he was already over seventy years of age, and having "no tread but labouring which failed me....and now my strength my sight and my hearing fails me that I am not able to win a Days work...", he simply had no credit worthiness. Unlike the younger man, McIldonich, he could not expect

⁸
SRO GD121/43/229/1/41

bills to be drawn on his behalf. Thus, his only option was charity.

Why all of McIldonich's unpaid debts, outstanding in the above example, were not included in the testament is not entirely clear. However, the debts owed to the eight executor creditors who administered the estate were, with the one exception, those described in the attached record of diligence. Those outstanding to other creditors were listed in the standard manner in the testamentary inventory.

The omission of debts from the testamentary record undoubtedly occurred for other reasons - probably most frequently because they were unknown to the executor. The testament of John McGillivie,⁹ a wadsetter in Balachraggan, records that he died in March 1728 with apparently £2,155 10s 2d worth of assets. Of that amount £1,737 12s 2d was accounted for in debts owing to him - £1,000 being due from the Duke of Atholl for a wadset agreement on the lands of Ballintuim. His goods were sold by roup so the inventory is detailed and lengthy and shows a total of £394.3.0's worth of 'goods and gear'. On the face of it McGillivie was, in material terms, a reasonably wealthy man, but in the accompanying will he stated that his 'goods and gear' would not be sufficient to cover his own outstanding debts. None of these debts

⁹ SRO CC7/6/3/236

recorded. Whether McGillivie included the sums owing to him under 'goods and gear' is not clear, but if not he was obviously assuming that they would not all be paid to his estate soon after his death. No reason is given as to why the debts were not recorded, but if this was a frequent occurrence due to lack of knowledge on the part of the executor it may be indicative of a significant bias in testamentary data.

Work by the Whytes on testaments from the Panmure Estates in Angus does not substantiate the tendency of the Grandtully testaments towards a high ratio of creditors to debtors amongst testators. There they found that in 69% of cases testators died as creditors and in 70% as debtors.¹⁰ On the other hand, Marshall's study of seventeenth-century testaments¹¹ found that 23.3% of a sample of the yeomanry of north-west England died with outstanding credit of greater than £25 (sterling), whilst 13.5% died substantially in debt. He does not give more precise details but suggests that those outwith these groups had minimal credit holdings or unpaid debts. A sample of 4,650 inventories from the east Midlands and Norfolk showed 40% of testators as creditors, whilst although Holderness does not provide the equivalent

¹⁰ Whyte, I D & K A (1984) Debit and Credit, Poverty and Prosperity in a Seventeenth Century Scottish Rural Community, p8

¹¹ Marshall, J D (1973) The Domestic Economy of the Lakeland Yeoman, 1660-1749, in Trans of the Cumbrian & Westmorland Arch and Antiq Soc Vol LXXIII, p211

figure for debtors he comments that "in 16 per cent the proportion of debts to the total personalty exceeded one third".¹² Without more detailed information these sets of figures cannot be directly compared although there is a suggestion that a higher proportion of people died as creditors than as debtors. More work is clearly necessary to establish whether or not there is a significant trend in these figures in Scottish testaments, whether those of the Grandtully testaments are a reflection of the administration of the Dunkeld Commissariat or are merely the consequence of an unavoidably small sample.

The sample size further limits analysis because of the sparse distribution of testaments across the study period - an average of less than one document per year. (Table 6.4 below illustrates the frequency of testaments from each estate.) This sparsity obviates the possibility of any meaningful analysis by time series over the study period.

Despite the severe restrictions of the data they can suggest trends and illustrate examples. The testaments do, as discussed above (5.1.3), directly provide information concerning debt direction, debt values and reasons for indebtedness. Here, they offer the opportunity of

¹² Holderness, B A (1976) Credit in English Rural Society before the Nineteenth-Century, with special reference to the period 1650-1720, Ag Hist Rev 24, p102

	MURTHLY	AIRNTULLY	GRANDTULLY	STRATHBRAN
1650-4				
1655-9	27 (2)			21 (2)
1660-4				
1665-9				
1670-4				
1675-9				
1680-4				
1685-9	21 (5)	25 (4)		5 (2)
1690-4	32 (3)	3 (1)	6 (1)	6 (2)
1695-9				6 (2)
1700-4				
1705-9				
1710-4	11 (1)		1 (1)	
1715-9			11 (5)	1 (1)
1720-4	24 (4)		8 (4)	19 (6)
1725-9	38 (3)			16 (2)
1730-4	5 (3)		5 (3)	
1735-9	1 (1)		5 (2)	
1740-4	3 (2)		2 (2)	28 (5)
1745-9	4 (2)	3 (1)	7 (3)	28 (5)
1750-4	24 (1)		17 (4)	36 (1)
1755-9			14 (3)	
1760-4			1 (1)	17 (2)
1765-9				
Total Debts:	190	31	77	183

Table 6.4 Frequency of debt transactions in Testaments 1650-1765
(bracketed figures represent the number of testaments)

looking at these characteristics in relation to debts internal to each estate unit, inter-estate indebtedness and debts external to the group.

Debt Contacts, Debt/Credit Flows and Debt Transactions have been differentiated as separate elements of the data. A Debt Contact is made simply by one person being in debt to another. It is irrelevant whether there is more than one recorded debt between the individuals or whether the debts run in one or both directions. The Contact is merely dependent on the individuals having met or contacted one another through an intermediary.

In looking at the relationships established when a Contact is made it is assumed that when A dies in debt to B (A is the debtor and B the creditor) that there has been a cash/kind flow from B to A. In other words, the Credit Flow is from B to A whilst the Debt Flow is in the opposite direction. Within the transaction(s) and/or the testamentary entry, this flow (comprising one or more debt transactions) receives a value. The relationships described by these flows can be examined functionally or spatially as a debt flow between individual places, or places grouped into districts - in this study the four Estates plus one External district.

Table 6.5 is a collation of all the Debt Contacts identified in the testaments. By reflecting indebtedness between one individual and another, although often inclu-

From To	G	S	M	A	E	T
GRANDTULLY	29	5	2	0	6	42
STRATHBRAN	8	76	9	0	15	108
MURTHLY	8	3	35	2	8	56
AIRNTULLY	0	0	4	11	11	26
EXTERNAL	30	34	88	2	-	154
	75	118	138	15	40	<u>386</u>

Table 6.5 Debt Contacts

ding more than one actual debt, the number of Contacts provides a proportional indication of the degree of integration or isolation of each of the estates.

The total number of contacts satisfied which related to the estate unit broke down (from Table 6.6) as follows:

Internal to individual estates	151	39.1%
Internal to the Estate Group	41	10.6%
External element	194	50.3%

whilst the values of the transactions within those contacts (Tables 6.7 & 6.8) were:

Internal to individual estates	£7819.15.03	31.8
Internal to the Estate Group	£5290.06.06	21.5
External element	£11472.19.05	46.7.

Both as Contact numbers and transactions values the External element accounts for about half of all debt/credit transactions.

If the External element is divided by Estate the following is found:

	External Contacts	% of total External Contacts
Grandtully:	36	27.9
Strathbran	49	21.9
Murthly	96	51.9
Airntully	13	31.7

These figures seem to indicate that Murthly is most strongly integrated with the External area. However, these data could simply be a reflection of the geographical area and population of the individual estates. Of the two characteristics area is the easier to estimate; by using modern acreages and boundary descriptions from

ESTATES AS DEBTORS				AS CREDITORS		TOTAL	
		No.	%	No.	%	No.	%
ALL ESTATES	U	151	65.1	151	43.6	302	52.2
	O	41	17.7	41	11.9	82	14.2
	E	40	17.2	154	44.5	194	33.6
GRANDTULLY	U	29	69.0	29	38.7	58	49.5
	O	7	16.7	16	21.3	23	19.7
	E	6	14.3	30	40.0	36	30.8
STRATHBRAN	U	76	70.3	76	64.4	152	67.3
	O	17	15.8	8	6.8	25	11.1
	E	15	13.9	34	28.8	49	21.6
MURTHLY	U	35	62.5	35	25.4	70	36.1
	O	13	23.2	15	10.9	28	49.5
	E	8	14.3	88	63.7	96	14.4
AIRNTULLY	U	11	42.3	11	73.4	22	53.7
	O	4	15.4	2	13.3	6	14.6
	E	11	42.3	2	13.3	13	31.7

Table 6.6 Debt Contacts; Estates as Debtors and Creditors

From	To					
		G	S	M	A	E
GRANDTULLY		2189.13.00	67.13.04	108.00.00	-	741.15.04
STRATHBRAN		567.00.00	3150.09.05	3598.02.10	-	184.13.04
MURTHLY		625.05.08	28.06.08	2018.16.10	31.06.08	919.07.00
AIRNTULLY		-	-	264.11.04	460.16.00	337.08.08
EXTERNAL		1743.11.06	3706.15.11	3828.13.00	10.14.08	-
		5125.10.02	6953.05.04	9820.04.00	502.17.04	2182.04.4
						<u>24,584.01.02</u>

Table 6.7 Debt Transaction Values (£ Scots)

ESTATES AS DEBTORS				AS CREDITORS	
		£ Value	%	£ Value	%
ALL ESTATES	I	7819.15.03	51.2	7819.15.03	34.9
	O	5290.06.02	34.6	5290.06.06	23.6
	E	2183.04.04	14.3	9289.15.01	41.5
GRANDTULLY	U	2189.13.00	70.6	2189.13.00	42.7
	O	175.13.00	5.6	1192.05.08	23.3
	E	741.15.04	23.8	1743.11.06	34.0
STRATHBRAN	U	3150.09.05	42.0	3150.09.05	45.3
	O	4165.02.10	55.5	96.00.00	1.4
	E	184.13.04	2.5	3706.15.11	53.3
MURTHLY	U	2018.16.10	55.7	2018.16.10	20.6
	O	684.19.00	18.9	3970.14.02	40.4
	E	919.07.00	25.4	3828.13.00	39.0
AIRNTULLY	U	460.16.00	43.4	460.16.00	91.7
	O	264.11.04	24.9	31.06.08	6.3
	E	337.08.08	31.7	10.14.08	2.0

Table 6.8 Transaction Values; Estates as Debtors and Creditors

the estate records and title deeds, the respective extents have been calculated as:

Grandtully	10.050	acres
Strathbran	14,504	"
Murthly	9852	"
Airntully	900	"

Although approximate, these sizes certainly provide a reflection of the comparative extent of one estate to another. For the three main Estates the relationship is inversely proportionate. However, if the number of tenants is extracted from rentals to provide an indicator of the relative (economically active) populations the relationship becomes almost directly proportional.

	No. of Tenants (in 1732)	% of total
Grandtully	64	21
Strathbran	80	26
Murthly	134	43
Airntully	31	10 ^{1 3}

This substantiates what would have been intuitively expected. Murthly estate was more densely populated than Strathbran and Grandtully (one rent paying tenant to 73 acres as opposed to 181 and 157 acres respectively). Its population had more immediate access to important markets such as Dunkeld, Auchtergaven, Methven and Perth and could, therefore, more readily make use of the external sphere of exchange than the two Highland estates (4.2.3).

Airntully's comparatively high degree of economic inte-

¹³
SRO GD121/87/1/19(1)

gration with the outside area is also to be expected. An almost wholly arable area lying to the south of the main group, access to places outwith the Estates would have been much easier than for any of the others. The reasons for the incurrence of the External Contacts are not recorded but in all except 2 cases the testators are creditors which suggests that the transactions were either sales of goods from the farms or loans. The lack of contact with the other Estates compounds Airntully's independence from the Group; of the 4 'Other' contacts in which Airntully is debtor all represent unpaid rents. This lack of commercial contact between Airntully and the other estates is consistent throughout these data (see also 6.1.3) which suggests, not surprisingly, that market forces were stronger than any paternalistic or cohesive forces emanating from the centralised administrative organisation of the Estate Group (Airntully was always factored in conjunction with Murthly).

Looking at the figures in Tables 6.5 and 6.6 in conjunction, it is possible to substantiate the implication in the figures above, that Strathbran was the most economically insular of the Estates. As the most geographically isolated from the others and most highland of the four (4.2), an environmentally deterministic argument is upheld by the data. Of 150 contacts over 50% were Internal to Strathbran itself, whereas for Grandtully and Murthly the equivalent proportion was 32% and

22% respectively.¹⁴ These figures further establish the spectrum from open to closed economy which was suggested by the agricultural material in chapter 4 and the response to the legal system outlined in 5.2.2 - Murthly (and Airntully) as the most integrative, Grandtully in the middle and Strathbran acting as strongly self-sufficient unit.

Turning to the actual levels of indebtedness involved, the Estate Group can be treated as one unit. The total of all the debts recorded - in which an estate owed money - was £15,293.05.09. Of that figure some £13,109.01.05, 85.7% was contracted with some other place in the Estate Group and hence, only £2183.04.04 or 14.3% was externally established. Similarly, if all credits - money/goods owed to the Estates - are totalled the figure is £22,399.16.10. Of that 58.5%, £13,110.06.09, was contracted internal to the unit with 41.5%, £9,289.15.01 of outstanding debts^{was} owed by people outwith the Estates. If these figures are treated as "pre-death" credit flows the result can be summarised as in Figures 6.4 & 6.5.

The division of the Input flow certainly compounds the theory that estates were at least partially closed economies, with, in this case, apparently close links

¹⁴ This calculation was based on counting a debt/credit relationship between two people on the same estate as one debt contact ie taking account of the problem of doubling in the total cell of table 6.6.

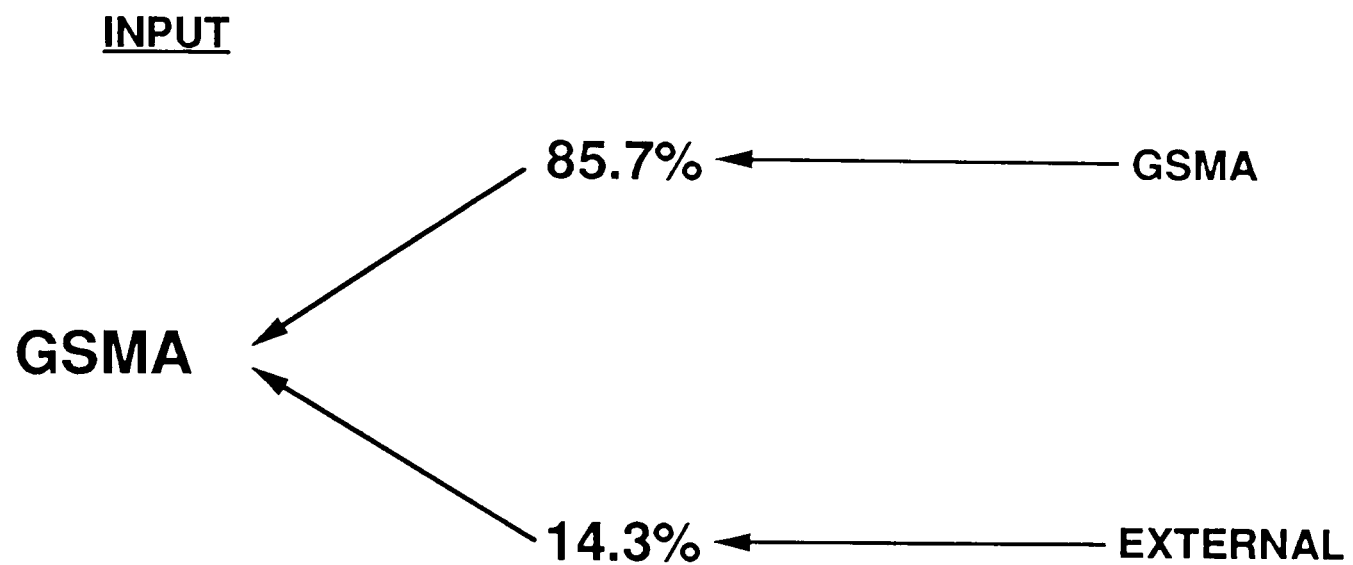


Fig. 6.4 Percentage Credit Flow into the Estate System

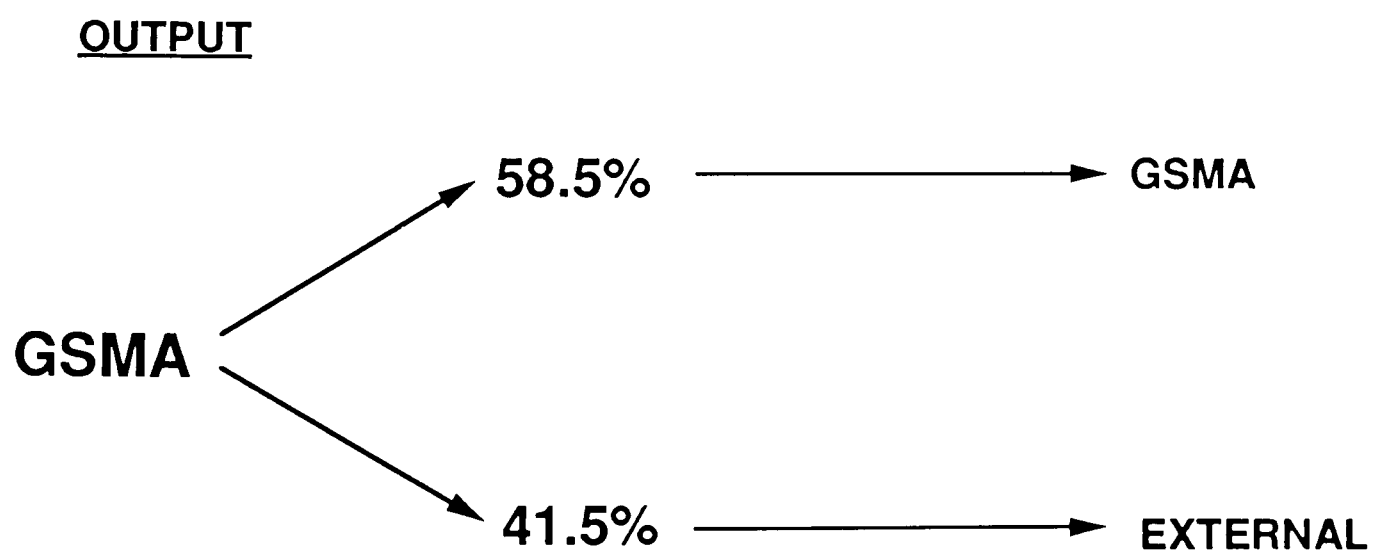


Fig. 6.5 Percentage Credit Flow from the Estate System

between the group. The Output division is rather surprising, suggesting as it does that over 40% of credit extended by the Estates was to the External area. This figure is at least in part due to the bias of testamentary data. As a cross-section of an individual's economic position at the time of death a testament may appear to offer a 'snapshot' which freezes that position and is, therefore, a view unaffected by external factors. However, as already mentioned above, the testamentary data may be influenced by a number of factors, including an old or ill person sorting out his or her affairs before death. Not only would this tend to increase the proportion of creditors in testaments, but could increase the recorded proportion of transactions with the external area. The function of distance as a barrier to easy communication would have played its part.

In addition, of the 481 recorded transactions over a quarter are listed without a reason, however, the remaining 353 have been classified in tables 6.9 & 6.10. The most outstanding characteristic of these figures is that in all four of the estates, around half of the recorded transactions were in the form of loans at interest - largely made to the External area. If this small sample is in anyway illustrative of the whole this certainly indicates that there was a 'will to lend'. That 169 of the specified transactions (48.2%) were incurred as some form of interest-making loan clearly indicates that some

Transaction Form/Type	G	S	M	A	Total
Sales (1c/1)	4	23	24	1	52
Service Payment (1c/3)	1	13	8	1	23
Official Debt (1c/4)		1			1
Rent	6	24	13	3	46
Dues (1c/5)	5		17		22
Non-Interest Loans (1a/6)	7	8	18		33
Loans at Interest (2b/6)					
No Bond	22	46	54	2	124
Bond	5	11	18	5	39
Bills		5			5
Prom Note			1		1
Executry (1a/7)	2	1	1		<u>4</u>
					350

Table 6.9 Number of Forms and Types of Transaction

Transaction Form/Type	G	S	M	A	Total
Sales (1c/1)	7.7	17.4	15.6	8.3	14.9
Service Payment (1c/3)	1.9	9.8	5.2	8.3	6.6
Official Debt (1c/4)		0.8			0.3
Rent	11.5	18.2	8.4	25.0	13.1
Dues (1c/5)	9.6		11.0		6.3
Non-Interest Loans (1a/6)	13.5	6.1	11.7		9.4
Loans at Interest (2b/6)					
No Bond	42.3	34.8	35.0	16.6	35.4
Bond	9.6	8.3	11.7	41.6	11.1
Bills		3.8			1.4
Prom Note			0.6		0.3
Executry (1a/7)	3.8	0.8	0.6		1.1

Table 6.10 Percentage of Transaction Forms and Types

proportion of means above subsistence was used for purposes other than direct consumption. To establish the proportion, substantially more information would be required about the standards of living and subsistence thresholds. Of the loans themselves, nearly 75% are not described as being made by bill, bond or promissary note. This may be a reflection of the manner in which they were recorded, but as the remaining quarter are all specified in terms of the credit instrument, this tends to suggest that loans at interest were being made without any form of written document.

The remaining loans which feature in the testamentary material comprise just over 10% of the whole. These were apparently based on a non-interest making agreement between people who knew one another. If these really did not include any interest component, they suggest a much higher willingness to lend money without return than would have been expected. In an economy with little cash, and even less of a cash surplus, people would normally be expected to make non-interest loans in kind. Nevertheless, the testamentary data do indicate this surprisingly high proportion of non-interest loans. However, as will become apparent in the following section, this level is certainly artificially high. The proportion of sale debts (lc/1) in the testaments is only 14.9% whereas, in the process data, sales comprise some 59.7% of all claims with only 5.7% represented by non-

interest making loans.

The next most important debt type illustrated by the testaments is rent. As previously mentioned (4.2.1 & 4.2.2) rent arrears or 'rests' are a unique component of the credit market within the rural economy. These represent a form of credit, on which interest was not charged, which was sometimes vital to the tenant economy.

The unpaid rents recorded in these data represent some 13.1% of all outstanding testamentary debts. They include a number of outstanding rent payments due to the laird. As these have all been recorded as owed to Murthly Estate, as the administrative centre, they have influenced the recorded debt flows. Table 6.11 and Figures 6.6 and 6.7 show the result if, £2,489.17.01, the total value of unpaid rent is extracted from the data. Despite comprising between 8% and 25% of the number of debts owing from each of the estates, the impact on the overall system as a percentage of the value of debts owing is minimal. As the level of arrears would have varied with harvest yields, survival of livestock and time of year, particularly in relation to the larger fairs and markets (4.3 & 4.4), the amalgamated figures available here are not really indicative of the likely importance of rent arrears as a safety valve in the peasant economy (Appendix 7) Furthermore, as was suggested by the Whytes, the non-payment of rent could be used

ESTATES AS DEBTORS				AS CREDITORS	
		£ Value	%	£ Value	%
ALL ESTATES	U	6924.17.01	54.1	6924.17.01	32.2
	O	3695.07.04	28.9	5290.06.06	24.6
	E	2183.04.04	17.0	9289.15.01	43.2
GRANDTULLY	U	2189.13.00	73.0	2189.13.00	42.7
	O	67.13.04	2.2	1192.05.08	23.3
	E	741.15.04	24.8	1743.11.06	34.0
STRATHBRAN	U	3150.09.05	50.2	3150.09.05	45.3
	O	2942.15.00	46.9	96.00.00	1.4
	E	184.13.04	2.9	3706.15.11	53.3
MURTHLY	U	1123.18.08	41.2	1123.18.08	12.6
	O	684.19.00	25.1	3970.14.02	44.5
	E	919.07.00	33.7	3828.13.00	42.9
AIRNTULLY	U	460.16.00	57.7	460.16.00	91.7
	O	-	00.0	31.06.08	6.3
	E	337.08.08	42.3	10.14.08	2.0

Table 6.11 Transaction Values exclusive of outstanding rent payments;
Estates as Debtors and Creditors

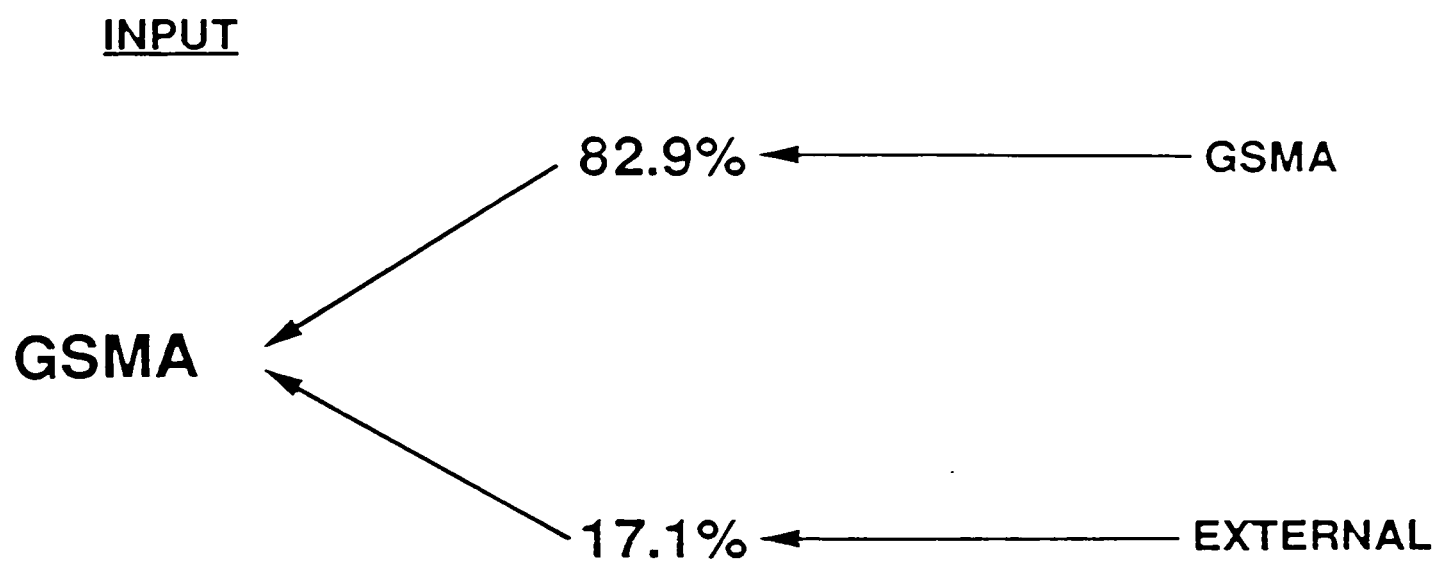


Fig. 6.6 Percentage Credit Flow into the Estate System - exclusive of rent

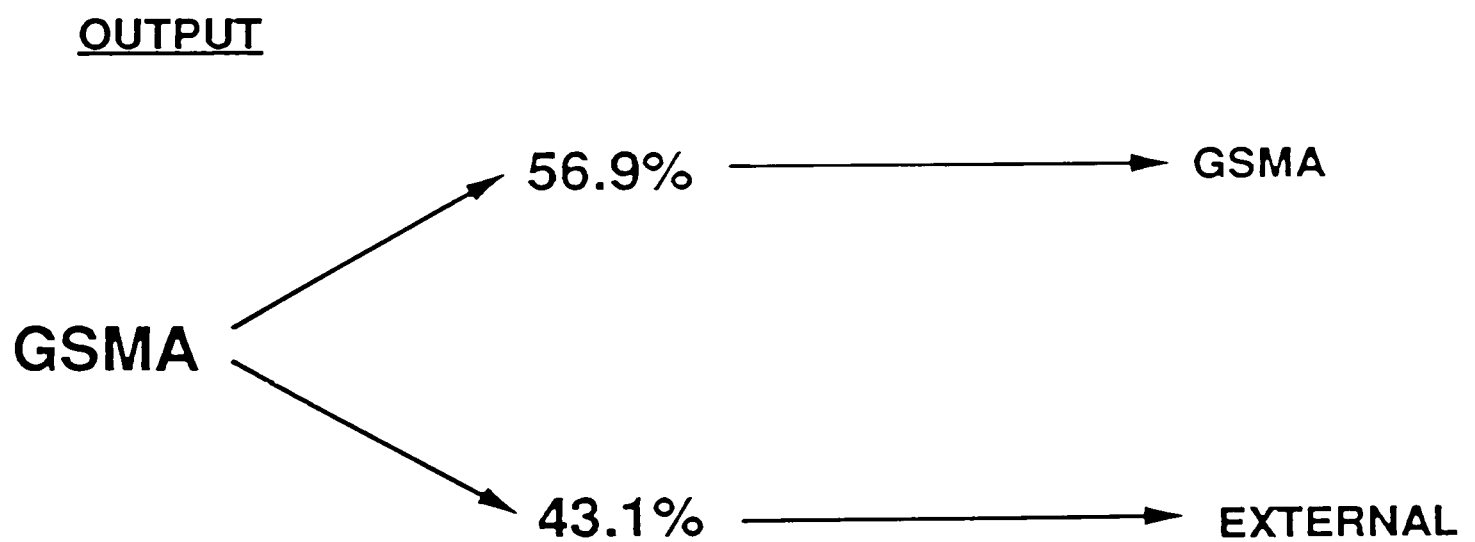


Fig. 6.7 Percentage Credit Flow from the Estate System - exclusive of rent

as a lever by tenants when proprietors failed to repay a loan,¹⁵ a small proportion of recorded arrears could then be indicative, not of economic hardship but, in fact, of capital surplus.

That loans were made up the social ladder is clearly apparent in the testaments, although no cases of rent arrears and a parallel loan were found in the Grandtully records. A number of outstanding loans to lairds did appear in the record. For instance, in 1717 John, Earl of Breadalbane (who was by then himself dead), was recorded as owing £740 of principal plus interest to Andrew Kippen, chamberlain on the Grandtully Estate.¹⁶ This loan was made over a comparatively short social distance. On the other hand, William Graham, a tenant in Culltulich, was in October 1731 claiming for 300 merks and the annual rent thereof, from a loan, by bond, which he had made to John, Duke of Atholl in 1707.¹⁷ Four examples of loans to lairds were found. None was to the laird of the lender at the time of the claim. It was not possible to discover whether the creditors had moved to the Grandtully Estates after the loans were made.

¹⁵ Whytes, I D & K A (1988) Debt and Credit, Poverty and Prosperity in a Seventeenth-Century Scottish Rural Community, in Mitchison, R & Roebuck, Economy and Society in Scotland and Ireland 1500-1939, p76. They further suggested that this was one of the reasons why proprietors preferred to borrow from widows who did not have this leverage.

¹⁶ SRO CC7/6/2

¹⁷ SRO CC7/6/3

Despite the high proportion of loans at interest recorded in the testaments, only two individuals were recorded as wadsetters - John McGillivie in Ballachraggan,¹⁸ (mentioned above and James Callender in Strathbran¹⁹ (see below). This seems to suggest that although there was available cash or capital in the economy after 1650,^{19a} it was employed to enable loans, not to move into the land market (6.1.3). This is substantiated by figures from the Panmure Estates²⁰ where no wadsetters appeared in the testamentary record.

Across the sample of testaments the existence of capital surplus to subsistence needs is apparent. 60% of all the inventories examined contained a credit element of over 10% of the total personal assets (Tab 6.12). The threshold of 10% was chosen to enable comparison with the same statistic produced by Holderness from English inventories.²¹ Coincidentally, he also found that 60% of inventories contained such a level of credits. However, the Grandtully figure is rather misleading; just over a third of the testaments which recorded credits did not contain any record of 'goods and gear'. These probably reflect the previously noted practice of distributing belongings before death. Nevertheless, if those data are removed from the calcula-

¹⁸ SRO CC7/6/3/p236

¹⁹ SRO CC7/6/4/482

^{19a} Conversely, Brown found that prior to 1640 the reverse was true, "The northern nobles and lairds resorted to wadsetting their landed properties on an unprecedented scale.." Brown, J J (1985) *The Social, Political & Economic Influences of the Edinburgh Merchant Elite, 1600-1638*, p332 and also chapter 7.

²⁰ Whyte, I D & K A (1988) *op cit*, p76

²¹ Holderness, B A (1976) *op cit*, p102

	MURTHLY		AIRNTULLY		GRANDTULLY		STRATHBRAN	
%	D	C	D	C	D	C	D	C
1650	0	0						
1656	6	88					82	7
							73	34
1658	0	0						
1688	57	0	22	35			34	0
	23	0	143	0			13	0
	58	0	132	3				
	108	0	130	0				
	37	0						
	0	0						
1689	0	74						
1690			29	33				
1691					95	4		
1692							48	24
							0	0
1693	112	75						
1695	0	88					0	88
							0	13
1712					0	100		
1714	0	100						
1716					0	0		
1717					159	0	0	100
						100		
					0	100		
					0	30		
1719	0	0						
1720					0	43	0	100
					0	0	44	0
							0	45
					0	73	0	33
1721					0	100		
1723	0	100					0	100
	0	100					0	100
1724	0	100			0	100		
	0	100						
1726							0	100
1729	113	10					0	86
	0	100						
1730	0	100						

D: Debts
C: Credits

cont.

	MURTHLY		AIRNTULLY		GRANDTULLY		STRATHBRAN	
%	D	C	D	C	D	C	D	C
1731					0	100		
					0	0		
1732	0	100			0	40		
	0	100						
1733					0	66		
1735	0	9			0	100		
1736					0	80		
1737					0	100		
1738					0	0		
1740							0	53
1741					0	5	0	75
							100	0
1742					26	0	0	0
1743	0	7					1218	0
1744	100	0						
1745	102	0	0	59				
			0	0				
1746					0	76	0	54
							0	33
1747							0	25
1748	100	0			182	0	0	0
					100	0	0	44
							0	55
							55	0
1750					0	84		
					0	100		
					0	100		
1752	0	5						
1754			0	0				
1755							15	77
1756					13	100		
1759					0	67		
1760					0	57	54	0
1761	0	0						
1762							17	29

Table 6.12 Percentage Personal Assets as Debts and Credits

tion, over 33% of testators still died with credits representing over a tenth of their estate. Overall, outstanding credit accounted for an average of 41% of assets in the testaments. Again, if those testaments containing no inventory of belongings are excluded, the average becomes 18.7%. Given that this figure comprises the average of all the testaments but only 52% of the sample contained credits of less than 100% this is a remarkably high level of credit holding. The weakness of the data makes it difficult to draw any but the most tentative of conclusions from these figures, but they do indicate that the volume of credit in the Grandtully Estates represented approximately 20% of the value of the moveable assets in the community. This level is not improbable and may well have been higher - the manner of the calculation itself having pulled down the final figure substantially - and compares closely with Holder-ness's finding of between 10% and 20%.²² Certainly, there is every reason to assume that Scottish credit levels would have been higher than English, at least in the rural community, given the comparative shortage of specie north of the Border and the comparatively liberal attitude towards indebtedness (3.0). The level of indebtedness against assets exhibited in the testaments averages 54% for the whole sample. However, the figures are severely skewed by one entry. The testament of James

²² *ibid.*, p102

Callender,²³ a wadsetter in Strathbran, records that he died £2,498.5.10 in debt. As his material assets represented only £205.11.6 his unpaid debts were equivalent to over 12 times the value of his estate. If this entry is excluded from calculations then the average falls to 23.7%. As above, this figure includes a number of testaments which only record debts and no material component. If these are also removed from the calculation then the average falls still further to only 16% for the complete sample. Yet another characteristic of the data suggests that for the vast majority this figure may have been still lower as a small number of testators died, like James Callender, with insufficient assets to cover their debts. Exclusive of Callender, 9 other such instances were found which ranged from levels of indebtedness 2% to 82% more than the value of their assets. Again, this level of insolvency, just under 10% of estates, accords surprisingly well with Holderness's findings who quotes the same proportion in his study.²⁴

Overall, the data from the sample of testaments offers only general conclusions. The lack of information which would have enabled classification of the testators into socio-economic groupings severely limited the extent of analysis. Nevertheless, they do indicate the presence of

²³
²⁴ SRO CC7/6/4/482
ibid, p102

a well established and energetic credit market. The mechanisms for the extension of credit, socially and geographically, were all in place and lubricating a low level market. However, the characteristics of that market suggested by the testamentary data are in certain respects substantially different from those expressed in the process data.

6.1.3 Data from the Small Claims Processes

As already established, data from the small claims court reflect only a tiny proportion of all debts incurred throughout the community. Nevertheless, they do exemplify how debts in general were created, enabled by the variety of available credit arrangements and, if taken to litigation, ultimately resolved. Moreover, they do not encompass the bias of testamentary data caused by the discharge of outstanding debts in the pre-death phase.

The data comprised a total of 333 processes containing some 731 debt transactions (Table 6.13). The data run for Airntully proved to be so much shorter than that of the other Estates ^{that} it could not be used for direct comparison with them. It has, however, been included in calculations concerning the total data set and been referred to where relevant. Across the whole period the level of transactions remained fairly steady; the noteworthy fluctuations have already been discussed (5.2.1).

As previously mentioned (5.2.2), the majority of the transactions pleaded in court were classified as External; in total just over 75% fell into that Category. (This characteristic of the data prevents ~~their~~ use as a measure of communication and integration in the way that the testamentary material was used). Nevertheless, the

No. of Processes							No. of Transactions						
Period	G	S	M	A	T	%	G	S	M	A	T	%	
1685-89	10	9	16	5	40 (20)	6.4	29	30	27	6	92 46)	6.7	
1690-04	2	1	7	1	11	3.5	2	1	20	1	24	3.5	
1695-09	2	5	11	-	18	5.6	2	6	12	-	20	2.9	
1700-04	5	4	7	5	21	6.7	6	4	7	11	28	4.1	
1705-09	1	2	5	1	9	2.9	1	3	11	2	17	2.5	
1710-14	1	10	7	2	20	6.4	1	20	9	2	32	4.7	
1715-19	4	1	5	-	10	3.2	4	4	8	-	16	2.3	
1720-24	5	4	12	1	22	7.0	6	5	20	1	32	4.7	
1725-29	8	7	7	-	22	7.0	24	14	17	-	55	8.0	
1730-34	7	7	9	-	23	7.3	13	12	13	-	38	5.5	
1735-39	11	4	18	-	33	10.5	31	4	67	-	102	14.9	
1740-44	5	13	8	-	26	8.3	15	24	20	-	59	8.6	
1745-49	6	7	9	-	22	7.0	14	18	14	-	46	6.7	
1750-54	6	7	9	-	22	7.0	12	15	16	-	43	6.3	
1755-59	7	2	2	-	11	3.5	34	17	2	-	53	7.7	
1760-64	5	4	5	-	14	4.5	5	20	11	-	36	5.6	
1765-69	6	2	3	-	9	2.9	8	25	5	-	38	5.5	
	91	89	140	15	333 (313)		207	222	279	23	731 (685)		

Table 6.13 Number of Processes and Transactions from each Estate

scatter of places with which the four estates was trading is in itself interesting. That many transactions would have been agreed at local market centres has already been pointed out (4.2.3), but a number were made with people from places well outside that local sphere of exchange. Even if the actual agreement was made at a market it seems unlikely that a credit arrangement would be acceptable, particularly to the creditor, if both parties were not at least aware of the location of the other's home.

Trading in Perth and Crieff would have been a frequent, everyday occurrence, although as mentioned above, merchants may have been reluctant to extend credit if they did not know the purchaser. On the other hand, the use of credit in agriculture was essential, and in the cattle trade it was endemic. Of this merchants would have been well aware. They must have extended credit until such time as the drovers passed through the glens to the trysts - paying sometimes in cash and sometimes by bill; until the harvest was gathered in; or until the linen was made. Only then would merchants expect payment for goods sold earlier in the season. A possible instance of such an arrangement appears in a Strathbran testament in 1688. The debt, owed by the testator James Dow, was £6 for a boll of meal due to David Rath merchant in Crieff. Dow had purchased the meal in the spring of that year but had died in October. His only recorded 'goods and gear'

comprised 16 sheep and 3 'kylie'.¹ It is possible to surmise that his intention had been to sell the fattened livestock that autumn, to pay his debts and probably incur more to buy meal for the following winter.

Other less predictable trade links have, however, emerged from the small claims and testamentary data. In 1760 Alexander Anderson, an Excise Officer at Inver was claiming against William Jackson, a life-rent tenant in the Byres of Murthly, for the value of a pound of tea "delivered by Mr Geddes from Arbroath in 1755".² On this occasion the credit was extended, not between vendor and purchasers - across the longest distance - but between the two intended purchasers. Although really consisting of two sales, the claim for the outstanding secondary transaction certainly suggests an awareness of Arbroath by Jackson. On the other hand, in 1736 an outstanding debt of £12 was recorded in the testament of Alexander Stewart in Tomtayewan in Grandtully, due from Duncan Stewart alias McColly in St Andrews. Here the debt is direct, with no intermediary. As Alexander Stewart's personalty totalled only £8 in value, consisting as it did of:

- 2 old chests
- 1 pot
- 2 old blanckets
- 1 half canvas
- 3 elns kelt³

¹ SRO CC7/6/1. Kylie were small highland cattle.

² SRO CC7/3/76

³ Woollen fabric

this debt was a substantial component of the estate. No more information is given concerning the debt, but at over 60 miles distance it would have been a major undertaking to either dun for, or defray the outstanding amount. It is possible, but merely conjecture, that the testator and debtor were related and that the debt was not a loan at interest - no annual rent component is recorded.

It is important to note here the significant barrier imposed on the peasant credit market by distance. For the wealthy it was a limitation, but only in terms of time and convenience⁴ -the cost of employing a bearer or messenger enabled credit to be extended or requested from a distance;

"Sir,

The bearer is come from my Lady Marquess, with a letter to you. I know it is for the lonn of money."⁵

The above is an entry from a letter written by Henry Murray of Tullibardine to Sir Thomas Steuart of Grandtully. Equally sending money in cash or by note was readily undertaken; whilst at university in St Andrews in the 1640's John Steuart, son of Sir Thomas, would frequently be sent "tuentie rex-dollaris....for spending

⁴ Prior to 1700 there was no road running to the north of Dunkeld. Although the military road which followed the course of the Tay was built around 1739, in 1760 it still took the Duke of Atholl twelve hours to drive from Dunkeld to Blair Atholl. Today the same journey, of around 23 miles, takes less than half an hour by car.

⁵ Fraser, W (1868) The Red Book of Grandtully Vol II, p236

money" from his father.⁶

For those who had a readily transportable medium of exchange or credit facility the only limitations were travel time and credit worthiness. Those who neither used, trusted or possessed the facility of bills or notes or specie also faced the problem of finding a trustworthy messenger. In 1667 Thomas Bissat, then Commissary of Dunkeld and one of the trustees who managed the poor relief funds, mortified by John Steuart of Grandtully in 1747, wrote to James Steuart, a shoemaker in Edinburgh, about the plight of his elderly mother. Requesting money from James Steuart for her care Bissat wrote,

"I do not think it safe to trust the Dunkeld carrier with it the best way would be to see if Mr James Stewart or his brother Mr George would take it and give a draught upon their brother Ballechan for the same."⁷

For those who had such limited funds that they could not afford a bearer or messenger, the only options were to walk, ride or, if they were lucky, sail to places outwith the everyday local exchange area. Physical distance in itself was not the bar - travelling many miles on foot to find seasonal work, to fight, or to bear messages was a common enough occurrence - but to then enter into a deal based on credit was rarely a possibility as purchaser and vendor would be unlikely to meet again. Moreover, people

⁶ *ibid.*, Vol I, pcxxvii

⁷ SRO GD121/43/231

would rarely travel beyond their immediate horizons without good reason. In an economy based on subsistence the peasant could not leave his crops and livestock.⁸

Thus, time, distance and lack of familiarity (without the written word, recognition was an important factor in enabling credit) were important limitations to the geographical extent of the peasant credit market. Of all the transactions examined here only 4% had occurred across a greater 'awareness' distance than 20 miles. That is, although the participants may have agreed the deal at a market, in 96% of cases their respective homes were, at the time of transaction, no further than twenty miles apart. Of those transactions, just under three-quarters covered a distance of less than 10 miles. As these debt/credit incurrences do not represent the bulk of credit extensions, being largely External agreements, this suggests that whilst the networks of debt were vast, overlapping and interwoven, the inter-connecting links of the net were short, the majority being around 5 miles, but varying slightly with the changing pattern and hierarchy of markets or central places.

If only the Internal transactions are accounted, they demonstrate the same characteristics. Overall they

⁸ The frequent frustration of Clan chiefs and military leaders recorded at hay or harvest time when men left the fight to gather their crops bears witness to this pull even in times of strife.

average an 8 miles 'awareness' distance, whilst 64% of the Unit transactions alone were arranged between people living in the same fermtoun.

Although these Internal transactions represent less than a quarter of all the claims examined, they exhibit a generally increasing trend across the study period. The increasing proportion of Internal transactions heard by the Commissary is illustrated in Table 6.14. The reason for the aberrant fall in the period 1750-59 is not clear. If the more detailed breakdown of the figures in Table 6.15 is considered it can be seen that apparently no Internal transactions emanated from either Strathbran, Murthly or Airntully in that period, whilst over a quarter of all transactions related to Grandtully did fall into that Category.

This is almost certainly a reflection of the weakness of the sample; no other known factors could have had this unlikely effect on the figures. Despite this, the general trend seems to reflect the expected increase which would have taken place with the decline of the local baron courts into desuetude, immediately before and subsequent to the abolition of Heritable Jurisdictions in 1747. As the power of the laird and his courts declined, cases which concerned inhabitants of his estates would have been taken to other jurisdictions, particularly to that of the Commissary Court.

Period	I Transactions	E Transactions	I Transactions as % of total
1680-89	8	85	9.0
1690-99	12	32	27.2
1700-09	7	38	18.4
1710-19	11	37	29.7
1720-29	18	68	26.4
1730-39	30	110	27.3
1740-49	37	68	54.4
1750-59	12	84	14.2
1760-69	45	29	60.8
	180	551	

Increasing
Trend




Table 6.14 Internal Transactions as percentage of the total number of transactions in each period

Period	Grandtully			Strathbran			Murthly			Airtully		
	I	E		I	E		I	E		I	E	
	U	O		U	O		U	O		U	O	
1680-89	3	-	27	2	-	28	3	-	24	-	-	6
1690-99	-	1M	3	4	-	3	2	1G 3S 1A	25	-	-	1
1700-09	1	3S	3	1	-	6	1	-	17	1	-	12
1710-19	1	-	4	7	2M	15	-	1S	16	-	-	2
1720-29	1	6S	22	4	-	15	6	1G	30	-	-	1
1730-39	3	3S 10M	28	3	-	13	2	1G 8S	69	-	-	-
1740-49	7	-	22	16	3G	23	10	1S	23	-	-	-
1750-59	3	8S 1M	34	-	-	32	-	-	18	-	-	-
1760-69	2	2S	9	38	2M	5	1	-	15	-	-	-
	21	34	152	75	7	140	25	17	237	1	0	22
	55			82			42			1		
Total Transactions	207			222			279			23		

E as % of total
transactions

73.4%

63%

84.9%

95.7%

Table 6.15 Number of Internal and External Transactions made by each Estate

The findings of the previous section concerning the spectrum of closed to open estate economies are verified here by the figures in Table 6.15. These demonstrate yet again the comparative self-sufficiency of Strathbran. Just over 90% of all units of credit extended from Strathbran Internally were to other inhabitants of that estate, whilst the equivalent figures for Murthly and Grandtully were 59% and 38% respectively. However, it must be borne in mind that a proportion of the credit extended to Other estates from Murthly and Grandtully was to Strathbran; in other words people in Strathbran were becoming indebted to people on the Other estates and using the credit facilities they offered to obtain goods which were not available within their local sphere of exchange.

As shown in chapter 4, the agricultural economy of Strathbran was dependent on livestock. Therefore, despite being strongly self-sufficient there were certain goods which could not be produced within the Highland farming economy (2.2.2) - in particular, sufficient grain to both grow and consume. Of the 35 recorded claims in which credit had been extended to people in Strathbran from Murthly and Grandtully, 23 were sales of grain, usually in the form of meal, but occasionally as seed.

The next most frequent sort of transaction involved payment for work done, by people from Strathbran, on the

more strongly arable estates. Five such transactions are recorded, a typical example was the claim brought in 1700 by James MacPhersone in Ballintaggart who had hired John Gow from Milnton of Innerchochill. He had promised Gow that "if he should shear as ane hook...in harvest last" he would be paid 1 boll of oats, but "that after he entred home for a day or two he thereafter deserted his service".⁹ MacPhersone's claim was for 12 merks (£8) "for 1 bolle oates". Thus despite being a payment for service, the original intention for Gow had been to earn meal to be consumed over the coming winter. Three of the remaining claims were concerned with bills of exchange which had been accepted in Strathbran. Although it is not specified, it is reasonable to suggest that these were intended as payments on cattle being reared in the Strath - this, as illustrated in chapter 4, was a form of credit facility with which the livestock orientated economy of Strathbran would have been familiar.

On those few occasions when credit was extended from Strathbran to the other estates there is no record of any relating to either grain or service. The most predominant commodity being traded was timber and also slate from the Drumbuie.

The second Category of debt transaction concerns the

⁹ SRO CC7/3/16(2). Desertion from service led to the employee becoming responsible for paying his ex-employer the sum originally agreed as payment for the work.

protagonists in litigation, those who originally agreed the credit arrangements. The classification Formal/ Informal was based on the social status of the participants (1.1).

Table 6.16 illustrates the amalgamated figures of Formal transactions for the Estate Group. Even without further refinement, another division between the credit market characteristics of the highland/livestock and lowland/ arable economies is apparent. Both of the highland estates exhibit a larger element of Formal transactions than their lowland neighbours - 35% as opposed to 24%. This suggests that more debts were being incurred to merchants and artisans by those living in the livestock economies, where there was more cash available, but a narrower range of goods to buy or barter than were available in the arable areas.

This is upheld by the more refined data in Tables 6.17, 6.18 and 6.19.¹⁰ Clearly, this characteristic is in itself a reflection of the spatial distribution of

¹⁰ The status or profession of individuals in the categories used in these tables were as follows:

Professionals: Ministers, Tutors, Clerks, Commissaries,
Writers, Excise Officers, Surgeons and Factors
Landowners: Lairds, Portioners and Heritors
Artisans: Weavers, Shoemakers, Slaters, Maltmen, Masons, Gard-
ners, and Smiths.

Debt	Grandtully	Strathbran	Murthly	Airntully	Total
1a/5					
1a/6	7	1	6		14
1a/7			1		1
1c/1	44	46	33		123
1c/2					
1c/3	7		5		13
1c/4	8		11		19
1c/5	3	19*			22
1c/6					
2a/4					
2a/5					
2a/6			3		3
2b/6		8	2		10
Z/8	2	4	6		12
Total	71	78	67	1	207
As % of total transactions	35.2	35.5	24.3	4.2	

* See text

Tab 6.16 Debt Transactions with a Formal Component from the Estate Group

Debts owed to Debts owed by	T	M	P	L	A	W	U
TENANTS		6	11	11	1		
MERCHANTS	3				1		2
PROFESSIONALS	3		1	1	1		
LANDOWNERS						1	
ARTISANS		1		5			
WOMEN		2	1				
UNIDENTIFIED		12	14	2	1		

Table 6.17 Grandtully Estate: Number of Formal Debt Transactions

Debts owed to Debts owed by	T	M	P	L	A	W	U
TENANTS		11	10	2	10		
MERCHANTS							
PROFESSIONALS					5		
LANDOWNERS					2		1
ARTISANS		1					
WOMEN		7	1	1			
UNIDENTIFIED		15	6	2	6		

Table 6.18 Strathbran Estate: Number of Formal Debt Transactions

Debts owed to Debts owed by	T	M	P	L	A	W	U
TENANTS		2	3	10			
MERCHANTS							4
PROFESSIONALS	1		3		5		2
LANDOWNERS		3			2		
ARTISANS		4	2				
WOMEN		2	1				
UNIDENTIFIED		10	11	2	6		

Table 6.19 Murthly Estate: Number of Formal Debt Transactions

merchants and professionals; few writers or surgeons actually lived outside Dunkeld. However, the tendency in the Strathbran and Grandtully figures is towards a concentration of tenant indebtedness to merchants, professionals and lairds. The two estates show a noteworthy disparity in relation to artisans as creditors to individuals in the Formal category. Whereas nearly 17% of all Formal debts owed from Strathbran (excluding the Kirk repairs¹¹) are to craftsmen; less than 5% fit this category in Grandtully. If anything, the reverse would have been expected, Grandtully having a higher proportion of professionals, merchants etc living within its bounds. Also, having more arable land, there would have been a greater requirement for smith work, more flax would have been grown therefore more weavers, more bear therefore more brewers etc.

The explanation lies in the partnership of John Kea and Robert Stewart, respectively a writer and a shoemaker in Dunkeld. Despite their stated professions, these men were running an apparently very profitable business selling meal and deals¹² and by lending money in bills. In one small claims process entered by them on 16th

¹¹ The single process which contains 19 claims for repairs to the Kirk of Logyallochry has previously been noted (4.2.1 & 5.2.2). Although the pursuers were liferent tenants, these claims have been included in the Formal Category because the tenants were merely pursuing on behalf of the church. However, as these claims are not really characteristic of the Category they have been omitted from calculations where they would otherwise render the results misleading.

¹² Wooden planks

August 1750, twenty-three overdue payments were cited from 14 separate defendants. The total of the claims came to more than £130. On average the meal price they were charging was some 35% higher than the equivalent fiars' price. This is very close to the average 'mark up' calculated in 6.1.1, however, the number of claims suggests that this was much more an organised business than part of the 'spot market'. Further evidence of the men working as a business partnership is provided by two processes dated 1745 in which they are selling meal on credit to an unidentified individual in Murthly.¹³

Returning to the Formal transactions, the proportion of Strathbran debts to artisans falls substantially if Robert Stewart, the shoemaker, is extracted from the figures. If the debts owed to artisans in the Murthly data are examined they show a far wider range of craftsmen than appeared in the other two sets. Artisan creditors for Murthly include weavers, shoemakers, fleshers, slaters, masons, maltmen and brewers whereas Grandtully and Strathbran together included only a smith, gardener, slater and 'shoemaker'. Here again is a reflection of the less diverse more isolated economy of the highland estates.

The separation of all Formal transactions from the main

¹³
SRO CC7/3/63

body of data offers the opportunity to look at the social direction of indebtedness in that group, and hence enable comparison with that in the Informal transactions. In doing this the 'women' and 'unidentified' groups must be excluded as the social status of these could not be established. Clearly this restricts an already small sample, but nevertheless, the remaining data offer illustrative examples of credit extension up the social hierarchy and provides an indication of their significance in the credit market.

No such transactions can be identified in the Strathbran data. From Grandtully there are 4 relevant merchant debtors, 6 professional and 1 landowning debtor. Murthly provides 9 professionals and 5 landowners as debtors. The important question is whether any of these credit extensions were made as loans as opposed to deferred payment in sales of goods or services. For Grandtully only one of the transactions did not clearly fall into the latter categories. This was a debt owing from Charles Duff of Glenelbert to Katherine Malloch in Sketewan, relict of George Ross late schoolmaster at Dalguise. It was for £4 and the reason for its incurrence is not given.¹⁴ As no explanation is given in the claim it seems likely that this transaction was also a deferred payment on a sale and not a loan of any other

¹⁴
SRO CC7/3/40

kind. Amongst the Murthly material only two transactions are not straightforward sales of goods or service. The first relates to an unsecured non-interest loan of £6.6.0, made by Thomas Clark, a slater in Dunkeld to Charles Stewart in Hillead of Fungorth in 1750.¹⁵ The other concerns a plaid given as security for damages. The pursuer, John Adamsone, merchant in Dunkeld was claiming against John Young, portioner in Graystone. Made in 1695 his contention that Young should pay £10 as,

"the price of a plaid which I caused to give him till such tyme as he should appryse what skeath and damage he had sustained by my horse eatening grass in the meadow bog and which plaid he refuss always to return and therefor ought to pay...."¹⁶

Neither of these claims is in any way indicative of credit extension up the social hierarchy. However, the complete lack of any evidence of such a practice is more likely to be a reflection of the source than of reality. The threshold of £40 Scots in the Commissary Court claims would immediately exclude the type of socially upward loan being investigated. The testamentary data have already indicated the existence of this sort of loan, but they would almost always have fallen outwith the competence of the commissary court. As shown in the previous section, all such loans identified were for substantially more than £40. Nevertheless, the findings

¹⁵ SRO CC7/3/66

¹⁶ SRO CC7/3/11(2)

here do suggest that around a quarter of the low level credit activity did cross the social threshold between the peasant and merchant/professional economies but did so through trade and employment not through interest-making loans. If money was being 'put to work' in small amounts it was happening within the peasant hierarchy itself.

The identification of debts made up the social hierarchy, within the peasant classes, is in itself fraught with difficulties. Unlike the majority of the upper classes, life cycle itself could bring relatively substantial economic and social change to an individual in the peasant classes. Just because someone is a subtenant at one point in his life does not mean that he will remain so until death, nor does the status of liferent tenant guarantee economic security. For example, in 1732 William McLeish, a subtenant in Sallachill, was able to offer 400 merks for the tack of Little Trochry "the ane half in hand the other half payable at Martinmas next."¹⁷ Whilst, on the other hand, a report on the "situation and condition" of the tenants of Grandtully barony made in 1783 noted that, "John Farquharson now liferenter of the fourth part of the town [Lednaskea] is a very poor man much in debt" although his subtenant Donald Robertson was, "to all appearances quite able for the fourth part

¹⁷
SRO GD121/37/208/4

of the town".¹⁸ To assume that someone designated sub-tenant was in fact less well off, or held less land than a tenant is fallacious. In 1687 John Forbes, a tenant of two horsegang of Innercochill in Strathbran, was the creditor in a case made against his sub-tenant, Thomas McDuff. The latter owed Forbes £35.13.4 plus the price of one boll of bear. This comprised £44 mks 6s 8d of silver duty, 20s stated as a 'present' - presumably a loan without interest, 45s of cess, 20s for half a wedder, 45s of grassum, £5 and an unspecified amount of grassum. On the face of it, this process concerns a tenant pursuing a troublesome sub-tenant. However, if McDuff is scrutinised more closely it becomes apparent that, not only was he a tenant of an eighth part of Meikle Logie, he was the tacksman for part of Innercochill; McDuff was a man of similar social standing to Forbes although this only becomes clear when evidence from several sources is pulled together. Even to assume a cottar was economically worse off than a tenant or sub-tenant can be dangerous, particularly if that person was also a weaver, cordiner or possessed any important craft skill.

The very existence of this fluidity in social and economic status would tend to encourage communication - class distinctions as they are understood today were not

¹⁸
SRO GD121/37/207/53

an inherent part of Scottish peasant society. A component of this general attitude was almost certainly a propensity to borrow and lend between the tenantry and craft classes with little attention paid to status. Establishing this empirically through the data, however, remains almost impossible. The strongest evidence for such a situation is the lack of evidence against it. Individual cases can be identified in which loans were made or credit extended, apparently, up the social ladder. For instance, in 1750 William Anderson, a subtenant to John Drummond in Dalpowie pursued a claim against William Miller and John Buie who were both masons in Dunkeld. His claim was for £14.16.0 of principal contained in a bill dated May 2nd 1748, plus the annual rent due for two years.

Other such claims are usually made in relation to rental disagreements, sales or services payments. The transactions had not been made in the form of loans but merely as credit extensions. One process which contains all of these elements was pursued by Donald Malloch in August 1688. His deposition stated,

"I Donald Malloch in Balnaguard claims against Alexander Duff in Concraigie that where I having posest ane pound land as his subtenant for the space of twa years for which I payed according to our agreement £15 and ane boll meall for the twa years deutie and ane rix dollar to Mr James Campbell nevertheless the said Alexander will make nor compose noe reckoning with ne nor give me discharge like he ought to does.

More I clame at him twenty eight shillings more foresaid as the pryce of fourtie loads of rubbish intrometted with be him appertaining to me twa years since

Item I clame at Donald Malloch seritor to Charles Williamson in Dunkeld the soume of ten pounds more foresaid as the element [aliment] of his nephew half ane year which he promitted to pay.
 More, I clame at him £4 for skaith and damage I sustained by the s[ai]d child on roting his bed clothes by his excrement
 More, I clame at him threttie shillings more as the pryce of ane wedder sheep resting be him to me tyme sine. And albeit I have oftymes requested then for that effect yett they still refuse without they be compelled."¹⁹

Not only does this example suggest that the credit extensions had been made upwards in the social hierarchy, it also exemplifies the problems which can be created by duplication of personal names; here both pursuer and one of the defenders had the same name. Moreover, this process indicates the high mobility of the tenantry. In this case Malloch has moved some 13 miles from the time of incurrence to the time of litigation. This was by no means unusual. People moved with frequency and ease; at the age of seventy, James Campbell, by then of Inchmagranachan, had lived at Meikle Findowie, Meikle Logie, Inchewan and the Bishoprick in Dunkeld.²⁰ He at least had remained on the same estate group but others moved more widely. In 1740 George Steuart's factor, John MacEwan was pursuing seven ex-tenants of Murthly Estate for unpaid duty.²¹ All of the defenders had moved to other estates, and in one case, to Cupar in Fife. Nevertheless, the legal processes which governed the

¹⁹ SRO CC7/3/3/1

²⁰ SRO GD121/85/13

²¹ SRO CC/7/3/56

running of the credit market, once it reached litigation, enabled claims to be made despite geographical distance. There was, however, almost certainly a distance threshold over which the Commissary Court failed to operate but it has not become apparent within this study.

Turning now to the types of debt which were pursued in the Small Claims Court, the debt classification model is once again brought into use. The classification of the debt transactions provides an index of the different types of debt incurred in rural society. It suggests the diversity of commercial exchanges that were facilitated by the use of credit, and indicates the complexity and range of economic arrangements which enabled the peasantry to trade and lend and borrow using the limited resources at their disposal. Tables 6.20 and 6.21 show the amalgamated classification of debts for the whole Estate Group. The most important characteristic is the predominance of sales. Throughout the study period, sales consistently comprise around 50% or more of the debt transactions taken to litigation. The one exception is in 1765 when the level apparently falls to 37.8%. However, if the data are more closely scrutinised the reason for this is clear: it was in that year that the tenants of Strathbran were asked to donate to a fund for church repairs;²² those who had failed to pay were taken

²² SRO CC7/3/81. Previously discussed in section above and in 4.2.1 and 5.2.1.

DEBT TYPE PERIOD	1a/5	1a/6	1a/7	1c/1	1c/2	1c/3	1c/4	1c/5	1c/6	2a/4	2a/5	2a/6	2b/6	Z/8	Total
1680-89	2	5	-	53	-	6	4	2	-	6	3	1	1Bo	9	92
1690-99	1	3	4	25	1	2	2	-	-	-	-	2	1	3	44
1700-09	1	2	-	22	3	5	1	-	-	-	-	1	1Bo	9	45
1710-19	-	-	-	35	-	7	2	-	-	-	-	3	-	1	48
1720-29	2	11	2	45	-	9	4	-	1	-	-	-	4Bi	9	87
1730-39	-	8	-	112	-	4	2	-	1	-	-	3	9Bi 1Bo	-	140
1740-49	1	7	4	53	-	4	11	5	1	-	-	1	2Bo 15Bi	1	105
1750-59	-	4	-	62	-	4	1	1	-	-	-	1	19Bi	4	96
1760-69	2	2	-	28	-	8	-	19	-	-	-	3	8Bi 1Bo	2	74
	<u>9</u>	<u>42</u>	<u>10</u>	<u>436</u>	<u>4</u>	<u>49</u>	<u>27</u>	<u>27</u>	<u>3</u>	<u>6</u>	<u>3</u>	<u>15</u>	<u>62</u>	<u>38</u>	<u>731</u>
	1.2	5.7	1.4	59.7	0.5	6.7	3.7	3.7	0.4	0.8	0.4	2.1	8.5	5.2	% of total transactions

Table 6.20 Compilation of Number of Debt Transactions of each Form/Type for Estate Group

PERIOD	DEBT TYPE	1a/5	1a/6	1a/7	1c/1	1c/2	1c/3	1c/4	1c/5	1c/6	2a/4	2a/5	2a/6	2b/6	Z/8
1680-89		2.2	5.4	-	57.6	-	6.5	4.4	2.2	-	6.5	3.3	1.1	1.1	9.8
1690-99		2.3	6.8	9.1	56.8	2.3	4.5	4.5	-	-	-	-	4.5	2.3	6.8
1700-09		2.2	4.4	-	48.9	6.7	11.1	2.2	-	-	-	-	2.2	2.2	20.0
1710-19		-	-	-	72.9	-	14.6	4.2	-	-	-	-	6.3	-	2.1
1720-29		2.3	12.6	2.3	51.7	-	10.3	4.6	-	1.2	-	-	-	4.6	10.3
1730-39		-	5.7	-	80.0	-	2.9	1.4	-	0.7	-	-	2.1	7.1	-
1740-49		1.0	6.7	3.8	50.5	-	3.8	10.5	4.8	1.0	-	-	1.0	16.2	1.0
1750-59		-	4.2	-	64.6	-	4.2	1.0	1.0	-	-	-	1.0	19.8	4.2
1760-69		2.7	2.7	-	37.8	-	10.8	-	25.6	-	-	-	4.1	12.2	2.7

Table 6.21 Classified Debt Transactions as % age of total in each period

to the small claims court. All 19 of the transactions registered in the 1c/5 cell for that period, in Table 6.16, were components of that single process. By removing these transactions from the calculation the skew is rectified and the sales component, now 51%, slots in consistently with the pattern shown by the others.

The second obvious characteristic of the amalgamated data in Tables 6.20 and 6.21 is the increasing proportion of loans by bill or bond. Only 1% of transactions were made by those means at the end of the seventeenth century. Sixty-five years later they comprise almost a fifth of all transactions. (By re-calculating the final percentage to take account of the unusual 'dues' process, in the same way as was done for sales, the proportion of 'cash loans at interest' in the final period rises to 16.4%). This trend is clear in all three of the estates (Tables 6.22, 6.23 & 6.24) for which the data series is complete.

These two predominant trends in the process data do not coincide with those exhibited by the testamentary material. Whereas over half of the process claims reflect sales, less than 15% of the debts recorded in the testaments refer to sales. On the other hand, approximately half of all testamentary debts record loan transactions at interest, whilst the equivalent proportion for the process material, at its highest level, is less than

Grandtully	1a/5	1a/6	1a/7	1c/1	1c/2	1c/3	1c/4	1c/5	1c/6	2a/4	2a/5	2a/6	2b/6	Z/8	Total
1680-89	-	-	-	20	-	2	-	-	-	6	-	-	-	1	29
1690-99	-	1	-	1	-	2	-	-	-	-	-	-	-	-	3
1700-09	-	1	-	3	-	1	1	-	-	-	-	-	-	1	6
1710-19	-	-	-	3	-	-	1	-	-	-	-	1	-	-	5
1720-29	-	-	-	18	-	1	4	-	1	-	-	-	1Bi	5	30
1730-39	-	2	-	37	-	-	2	-	1	-	-	-	2Bi	-	44
1740-49	-	1	1	18	-	-	-	4	1	-	-	-	1Bo 3Bi	-	29
1750-59	-	1	-	31	-	1	1	1	-	-	-	-	1Bi	3	46
1760-69	-	-	-	9	-	-	-	-	-	-	-	-	3Bi	1	13
	-	5	1	140	-	7	9	5	3	6	-	1	18	11	207

Table 6.22 Forms & Types of Debts Transacted by Individuals from Grandtully Estate

Strathbran	1a/5	1a/6	1a/7	1c/1	1c/2	1c/3	1c/4	1c/5	1c/6	2a/4	2a/5	2a/6	2b/6	Z/8	Total
1680-89	2	1	-	18	-	2	4	-	-	-	-	-	-	3	30
1690-99	-	1	3	3	-	-	-	-	-	-	-	-	-	-	7
1700-09	-	-	-	1	3	1	-	-	-	-	-	-	1Bo	1	7
1710-19	-	-	-	19	-	2	1	-	-	-	-	1	-	1	24
1720-29	2	-	1	10	-	5	-	-	-	-	-	-	-	1	19
1730-39	-	1	-	11	-	-	-	-	-	-	-	-	3Bi 1Bo	-	16
1740-49	1	5	-	19	-	3	1	1	-	-	-	1	8Bi 2Bo	1	42
1750-59	-	2	-	24	-	-	-	-	-	-	-	-	6Bi	-	32
1760-69	2	1	-	15	-	4	-	19	-	-	-	3	1Bi	-	45
	7	11	4	120	3	17	6	20	-	-	-	5	22	7	222

Table 6.23 Forms & Types of Debts Transacted by Individuals from Strathbran Estate

Murthly	1a/5	1a/6	1a/7	1c/1	1c/2	1c/3	1c/4	1c/5	1c/6	2a/4	2a/5	2a/6	2b/6	Z/8	Total
1680-89	-	4	-	12	-	-	-	-	-	-	3	1	1Bo	4	25
1690-99	1	1	1	20	1	-	2	-	-	-	-	2	1	3	32
1700-09	-	1	-	11	-	1	-	-	-	-	-	1	-	4	18
1710-19	-	1	-	11	-	5	-	-	-	-	-	1	-	-	18
1720-29	-	11	1	16	-	3	-	-	-	-	-	-	2Bi	4	37
1730-39	-	5	-	64	-	4	-	-	-	-	-	3	4Bi	-	80
1740-49	-	1	3	16	-	1	10	-	-	-	-	-	4Bi	-	35
1750-59	-	1	-	7	-	3	-	-	-	-	-	1	5Bi	1	18
1760-69	-	1	-	5	-	4	-	-	-	-	-	-	4Bi 1Bo	1	16
	1	25	5	162	1	21	12	-	-	-	3	9	23	17	279

Table 6.24 Forms & Types of Debts Transacted by Individuals from Murthly Estate

Airntully	1a/5	1a/6	1a/7	1c/1	1c/2	1c/3	1c/4	1c/5	1c/6	2a/4	2a/5	2a/6	2b/6	Z/8	Total
1680-89	-	-	-	3	-	2	-	-	-	-	-	-	-	-	5
1690-99	-	-	-	1	-	-	-	-	-	-	-	-	-	-	1
1700-09	1	-	-	7	-	2	-	2	-	-	-	-	-	2	14
1710-19	-	-	-	2	-	-	-	-	-	-	-	-	-	-	2
1720-29	-	-	-	1	-	-	-	-	-	-	-	-	-	-	1
1730-39	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1740-49	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1750-59	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1760-69	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	1	-	-	14	-	4	-	2	-	-	-	-	-	2	23

Table 6.25 Forms & Types of Debts Transacted by Individuals from Airntully Estate

one fifth. The two seem to have an almost inverse relationship.

The most likely explanation for this situation relates to the sources themselves. The principal of loans at interest was usually not called in by a creditor as long as the annual rent was being paid, therefore, such deals tended to be longstanding in nature, running sometimes for many years. In addition, loans made at interest, but without a bond, would be difficult to prove in law if there were no witnesses to the transaction. It would be interesting to establish whether a higher proportion of such loans appear in the unextracted data - in other words, the cases had failed due to lack of evidence. Conversely, sales, on which interest was not levied - although it seems probable that there was a penalty for non-payment within the specified time (6.1.1) - were normally settled within a much shorter time-scale. Sales, were then, less likely to appear in testaments as their credit component was much shorter than the equivalent period for loans. Moreover, the influence of life-cycle (6.1.2) also played its part.

This suggests that, in general, the small claims material provides a better reflection of the component parts of the peasant credit market than the testaments; the net cast by the small claims court having a much smaller mesh than that of the testaments. Nonetheless, the bias of

the processes towards External trade is, at least to some extent, balanced by the testamentary material.

All of the other debt Forms/Types recorded in Tables 6.20 and 6.21 comprise less than 7% of the claims. However, even at this level it is possible to identify certain similarities between the two sets of material. The third largest classification group in the process data is claims for work, either done or not done. It comprises 6.7% of the total, whereas in the testaments the equivalent figure is 6.6%. This similarity is also found for non-interest loans. At this level the figures are too low to be statistically meaningful, but they do indicate that with the exception of sales and loans at interest, the remainder of transactions in the credit market are represented at approximately the same level in both data sets.

To consider the debt classification more closely the material must be looked at within the estate units (Tables 6.22, 6.23, 6.24 & 6.25). The most obvious characteristic of these tables is that they parallel the findings of the amalgamated material very closely; no local aberrations have been masked. All four of the estates exhibit the high level of sales, and the three large estates illustrate the rising trend in the use of bills and bonds across the period. Indeed, the data are so completely dominated by these two characteristics that

it is difficult to identify any other relevant trends.

However, if the data are further refined by coding (as defined in 5.2.2), it becomes possible to interpret the material more meaningfully. Tables 6.26-6.34 illustrate the process data at the most detailed level. The first, table 6.26, records the amalgamated coded data for the Estate Group. Six reasons for indebtedness appear predominant:

C	(Cloth, yarn)	6.7%
L	(Livestock)	8.8%
Lo	(Loans)	14.9%
M	(Meal)	10.8%
Ti	(Timber)	8.6%
W	(Work done/not done)	7.8%

Comprising nearly 60% of the total number of transactions these six constitute the most important reasons for debts being undertaken in the peasant credit market. Loans have already been considered. Of the remainder, four fall within the Debt Type, Sales (1c/6), and the other within Service Payments (1c/3). These six tend to compound the impression that the small claims data provide a good reflection of reality, in that together they reflect the basic necessities of everyday life. Cloth and livestock being the most important cash earners (4.2.1 & 4.2.2); oatmeal as the basic staple of the diet; timber for building and implements; service payments as another cash or kind earner and loans to either cope with seasonality and dearth or to accumulate capital. The only other reason which would have been expected to

Estate Group	A	C	D	E	Ex	F	G	Gg	Gr	L	Lo	M	Ma	P	Pt	R	S	T	Ti	U	W	X	Z
1680-89		10.5	5	1	3	1	3		1	6	7	13	1	5.5		10.5	10	4		5	5	2	3
1690-99	0.5			1	1				10	6	5.5	5	1	1		2	2			3	3.5	1	4
1700-09			3	2		1	3		4.5	7	4	3	1	2		1		3		2	5	6	
1710-19	1	1		1			5	1	5	6	3	7		5	1	2	1		1	1	5		1
1720-29	1	2.5	2	3	2				6.5	10	15	6	3	5		7	7	1	8	8	9		8
1730-39	4.5	4		1		2	1		8	9	18	21	6	7		2	4		39	6	6		
1740-49	2	6	1		3			1	6	11	24	6	4	1		3	5		2	1	4	1	1
1750-59	2	10					1	1	2	4	18	16.5		1		1	1.5	1	9	1	4	4	3
1760-69	1	15	24	1	1					5	13	2	1	1			1	1	4	1	15		2
Total	12	49	35	10	10	4	13	3	43	64	108.5	79.5	17	28.5	1	28.5	31.5	10	63	28	56.5	8	28
% of total	1.6	6.7	4.8	1.4	1.4	0.5	1.8	0.4	5.9	8.8	14.9	10.8	2.3	3.9	0.1	3.9	4.4	1.4	8.6	3.8	7.7	1.1	3.8

731 transactions

Table 6.26 Coded Debts for the Estate Group

Grandtully	A	C	D	E	Ex	F	G	Gg	Gr	L	Lo	M	Ma	P	Pt	R	S	T	Ti	U	W	X	Z
1680-89		2								1		1(3)		1		6	2				1		
1690-99											1												
1700-09				1						(1)						1							1
1710-19																							
1720-29	1									1	1	1	(1)				1	1		3	(1)		
1730-39	0.5M			1					2(1)		3	(1)1M		4		1							
1740-49		5						1	2(2)		2(2)	2	2			(1)	2			1			
1750-59	2	9								1	2	3								1	1	(4)	
1760-69				1					1	2	1	2											(2)
Total	3.5M	16		3				1	5(3)	2(4)	10(2)	9M(4)	2(1)	5		8(1)	5	1		5	2(1)	(4)	(2) 1

100 transactions

Table 6.27 Coded Debts for which Grandtully Estate was Creditor

Grandtully	A	C	D	E	Ex	F	G	Gg	Gr	L	Lo	M	Ma	P	Pt	R	S	T	Ti	U	W	X	Z
1680-89									0.5 0.5	2		4.0	1			1	1						
1690-99										1M											2.5		
1700-09				1					1S									1S			1S		1
1710-19																1							
1720-29				1					2	2						1 6S			6	1			
1730-39	1M	3					1			3 1M		8 3S 4M				1M					2M		
1740-49										3			1										
1750-59								1S	2S	2 1M		2.5S				1	0.5S	1	7				
1760-69		1															1S	1			1		
Total	1M	4		2			1	1S	3 3S	12 3M		12 4M 5.5S	2			3 6S 1M	1 1.5S	2 1S	13	1	2M1S 3.5		1

107 transactions

Table 6.28 Coded Debts for which Grandtully Estate was Debtor

Strathbran	A	C	D	E	Ex	F	G	Gg	Gr	L	Lo	M	Ma	P	Pt	R	S	T	Ti	U	W	X	Z
1680-89		3	(1)		(3)		1			3	1					4	1	(2)		2	(1)		
1690-99										1	0.5												(3)
1700-09									1.5		1	0.5											(1)
1710-19				1M					1	3	(1)	(3)				1M				(1)	(2)		1
1720-29		0.5	(2)		(1)				0.5 (1)	3				1									
1730-39										1	2 (2)												
1740-49		(1)	1							(1)	1 (9)		1	1G		1	(1)			2G	(2)		
1750-59											(1)			1									
1760-69	1		3 (21)							(3)	1 (5)			(1)					3		2 (6)		2
Total	1	3.5 (1)	4 (24)	1M	(4)		1		2.5 (1)	11 (4)	6.5 (18)	0.5 (3)	1	2 1G (1)		5 1M	1 (1)	(2)	3	2 (1) 2G	6 (7)		3 (4)

128 transactions

Table 6.29 Coded Debts for which Strathbran Estate was Creditor

Strathbran	A	C	D	E	Ex	F	G	Gg	Gr	L	Lo	M	Ma	P	Pt	R	S	T	Ti	U	W	X	Z
1680-89		2	1				1					2					4			1	1		
1690-99									1														
1700-09										1			1								1		
1710-19							3		1					4	1				1				
1720-29											1						4		1		5		
1730-39									3		2	1	2	2			1			4			
1740-49										3	4	2		1								1	
1750-59		1									9	6					1						
1760-69		14																					
Total		17	1				4		5	4	16	11	3	7	1		10		2	5	7	1	

94 transactions

Table 6.30 Coded Debts for which Strathbran Estate was Debtor

Murthly	A	C	D	E	Ex	F	G	Gg	Gr	L	Lo	M	Ma	P	Pt	R	S	T	Ti	U	W	X	Z
1680-89		1		1							3	1								1 (1)		(2)	
1690-99					1				6 3S	1A (2)	2 (1)	1	1			(1)	1			1	1		
1700-09				1			1 (1)		1	1	1	2						2		1			1
1710-19									1	3	1	1											
1720-29				2						1	(8)	1					1			1	1 1S		1
1730-39	1G 1S									2	7 2S	1S	4				1		38 (1)		1 3S		
1740-49										1	2					1	1						1
1750-59							1				2										1		
1760-69					1						2 (1)										4		
Total	1G 1S	1		4	2		2(1)		8 3S	8 (2) 1A	15 2S (10)	6 1S	5			1(1)	4	2	38 (1)	4 (1)	8 4S	(2)	3

141 transactions

Table 6.31 Coded Debts for which Murthly Estate was Creditor

Murthly	A	C	D	E	Ex	F	G	Gg	Gr	L	Lo	M	Ma	P	Pt	R	S	T	Ti	U	W	X	Z
1680-89		2	3				1				3	2		3			1	2					2
1690-99				1						1	1	3		1		1	1			2		1	1
1700-09							1S			1	1			2						1	1		1
1710-19							2		2			2		1			1				3		
1720-29					1				3	3	5	4	1				1		1	3	1		2
1730-39	1	1				1			2	2	4	2		2			2						
1740-49	2				3				2	2	4	2	1	2			1		1		2		
1750-59											4	5							2		2		1
1760-69											3		1						1	1	2		1
Total	3	3	3	1	4	1	3 1S		9	9	25	20	3	11		1	7	2	5	7	11	1	8

137 transactions

Table 6.32 Coded Debts for which Murthly Estate was Debtor

Airntully	A	C	D	E	Ex	F	G	Gg	Gr	L	Lo	M	Ma	P	Pt	R	S	T	Ti	U	W	X	Z
1680-89																	1				2		
1690-99																							
1700-09			3			1			1	3		1									2		1 (1)
1710-19																							
1720-29																							
1730-39																							
1740-49																							
1750-59																							
1760-69																							
Total			3			1			1	3		1					1				4		1 (1)

16 transactions

Table 6.33 Coded Debts for which Airntully Estate was Creditor

Airntully	A	C	D	E	Ex	F	G	Gg	Gr	L	Lo	M	Ma	P	Pt	R	S	T	Ti	U	W	X	Z
1680-89						1								1									1
1690-99												1											
1700-09																							
1710-19		1						1			1	1											
1720-29																							
1730-39																							
1740-49																							
1750-59																							
1760-69																							
Total		1				1		1			1	2		1									1

7 transactions

Table 6.34 Coded Debts for which Airntully Estate was Debtor

feature in this group is seed grain. On closer inspection of the coded data the reason for its omission is apparent and is purely a reflection of the method of coding used. Grain and seed grain were coded separately. If the two had been catalogued together they would have amounted to 10.3% of the whole.

The eight tables, 6.27-6.34, illustrate each estate as debtor and creditor for the transactions in which each was ^vinv_holved. The figures themselves have been recorded according to whether the debt was External, Unit or Other. The Unit figures are bracketed whilst the Other figures are paired with the appropriate estate initial.

These coded data substantiate trends which have already been established and also indicate some others. In relation to livestock, for example, they show Strathbran as a net creditor but a net debtor for meal. Additionally, they illustrate that in relation to flax and linen, and to a lesser extent wool, Grandtully is a net creditor, whilst for Strathbran the reverse is the case. These characteristics of the two highland estates cannot be extracted from the estate papers but the debt/credit data is strongly indicative of this bias.

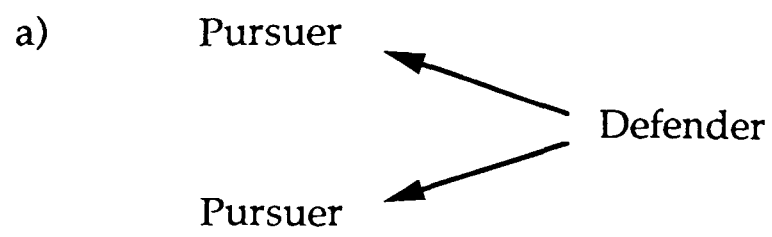
On the other hand, the Murthly data illustrate an economy less dependent upon one crop although, surprisingly, the estate appears to be a net debtor for meal. This is perhaps a result of the need for meal to pay rent as well

as to support a comparatively dense population. Concerning rental payments these data indicate that a very small proportion of indebtedness was caused by the inability to pay rent - only 3.9%. However, the bias of this sample caused by existence of barony courts renders this proportion meaningless.

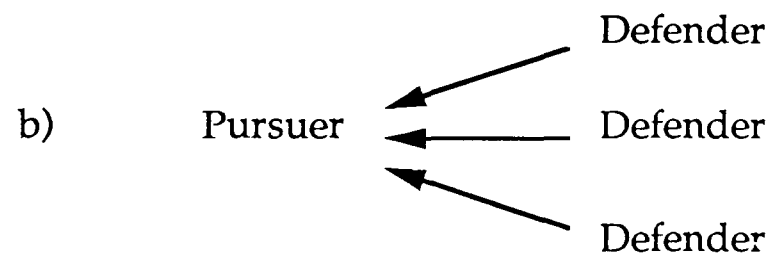
The other reasons for indebtedness illustrate no particular trends either through time or between estates. The debts themselves do, however, illustrate some interesting examples of indebtedness and display different debt structures. Apart from the straightforward debt, between one pursuer and one defender, the claims data contain examples of eight other debtor/creditor relationships (Fig 6.8).

a) Multiple Pursuer Debt

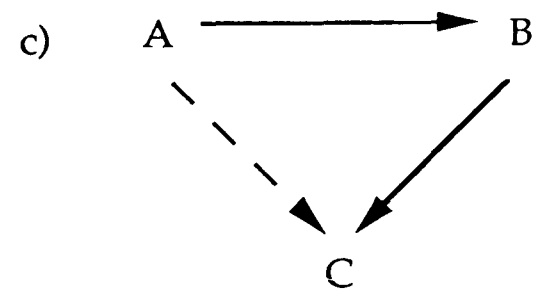
This is a straightforward situation in which two or more individuals are pursuing for the same debt. An example of this has previously been mentioned in the case of the John Kea and Robert Stewart, writer and shoemaker in Dunkeld, who acted together in lending and selling by credit extension. Another version of this relationship occurred when one plaintiff had extended credit to several individuals: in the case, for instance, of Duncan McLean of the Milntoun of Strathbran, who in one year was party to three processes which contained, in total, seven claims. In each case McLean was the pursuer and with



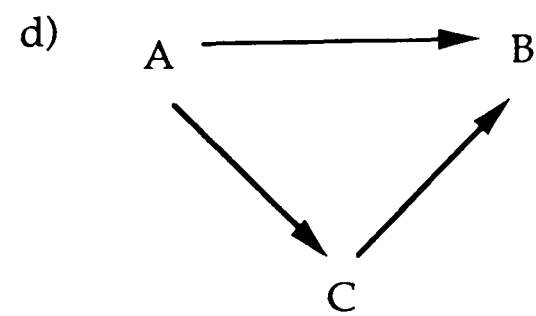
Multiple Pursuer Debt



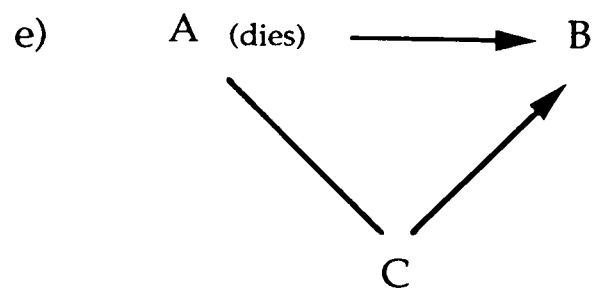
Multiple Defender Debt



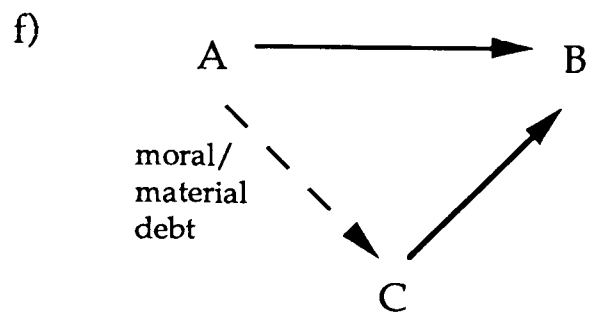
Debt Network



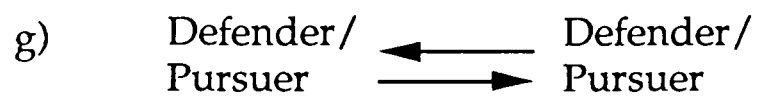
Three-way Debt



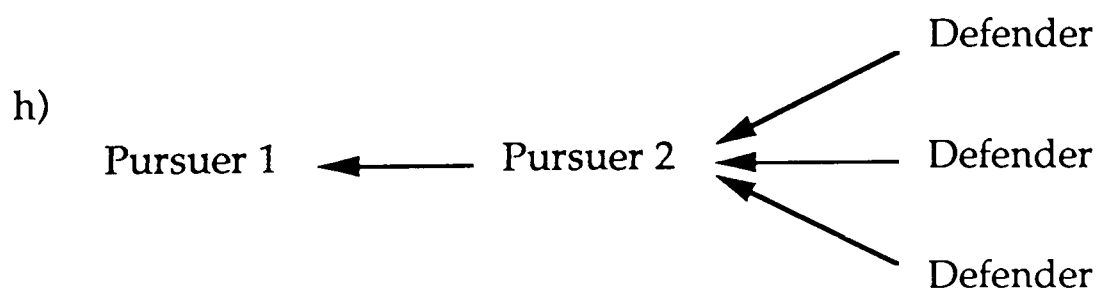
Three-way Debt imposed by a death



Cautioner Debt



Dual-direction Debt



Layered Debt

Fig 6.8 The Structure of Debt Relationships

only one exception the loans were in the form of bills at interest. Unfortunately, as this pattern begins to suggest the characteristics of usury as a bye-employment, McLean does not appear again in the record and it is, therefore, not possible to establish whether he became increasingly affluent. The multiple pursuer structure appeared 65 times in the record and thus comprised almost 9% of the total transactions.

b) Multiple Defender Debt

Again this is a simple debt relationship in which more than one person is responsible for payment. Usually they were stated as being "cojointly and severally" responsible. The majority of claims concerning this form of relationship, referred to unpaid rent or duty although other types did occur; in 1730 Thomas Soutar at the Boat of Murthly claimed against James Jack and John Cathrow in Slogenholl who were jointly responsible for paying him "the remains of two swine bought and received in March last".²³ Such debt structures accounted for 5% of all claims examined, only three of which related to bills or bonds. One of these was a bill drawn by Duncan McLean in Strathbran in 1740; it had been accepted by three men, Malcolm McCaurish, John McCaurish and his son, all of whom were deemed to be responsible for its payment.

c) Debt Network

²³
SRO CC7/3/46

The debt network occurs where more than one debt is owed between three or more people, ie A owes B but B owes C, therefore, C demands payment of B's debt by A. An example of such a network occurred in a claim made in 1700 by Robert Adamsone, a merchant in Dunkeld, against Thomas Dow, a tenant in Middle Inchewan, and John Stewart, a lister in Logierait. Dow owed Stewart £6 but in turn, Stewart owed Adamsone £15 plus annual rents. Therefore, Adamsone was claiming £6 from Dow towards the £15 outstanding to him from Stewart.

d) Three-Way Debt

The three-way debt relationship usually only becomes apparent when the third party goes to law. Basically this structure involves one person taking on a debt on behalf of another. A simple case illustrates the situation. John McLeish, a tenant in Ballintuim, claimed against Donald McLaren in Little Findowie for half a boll of meal in 1725. McLeish had "become debtor for him to Duncan Campbell in Tomnagrew in spring last" for the half boll. Now McLeish was claiming £4 as the value of the meal.

Seventeen examples of this type of debt structure were identified. These suggest that people were willing to help each other in times of individual crisis and it must be assumed that the vast majority were repaid without recourse to litigation.

e) **Three-Way Debt imposed by a death**

This type of debt relationship is most frequently found in connection with rents or duty which become the responsibility of a tenant's heir after his death. Many such cases were pursued by the laird or his factor. In 1740 John MacEwan, factor to George Steuart of Grandtully, made seven claims for crop duty. Of those, three represented this category. One was made against David Clark, who had previously been a tenant in Dalbeathy on Murthly Estate, but who had by this time moved to Butterstone on a neighbouring estate some six miles away. In addition to his own duty owed on Crops 1736, 1737 and 1738, Clark was also due to pay his deceased father's duty for 1736.²⁴

This structure also appears in executry cases in which widows or children are pursued for the payment of their husband's or father's debts. Typical of this relationship is the claim made by John Dick in Milntown of Forneth in 1745, against Grissel McBeath in Meikle Burnbane for the price of "two ash trees bought and received by John McBeath her husband deceast...anno 1740".²⁵

Another version of this debt structure is exemplified by a claim made in 1740 by Alexander Smith, a flesher in

²⁴ SRO CC7/3/56

²⁵ SRO CC7/3/61/Bdle 1

Dunkeld. He was claiming £5.18.0 as the price of beef which had been sold by his father to David Pilmor, a wright in Dunkeld. His father having subsequently died, Smith took over the role of pursuer thereby reversing the debt flows of the more usual three-way debt triangle

f) Cautioner Debt

Examples of this debt usually only become apparent when the original debtor has defaulted on the loan or sale agreement. It can be identified in two ways. First, if the cautioner is pursued for payment or second, if the cautioner has paid and is claiming against the original debtor for reimbursement. The former occurred when William Roach, a merchant in Dunkeld, pursued William Gow for the price of two lippies of lintseed, "which he became cautioner to me for [blank] McMorich in Strabrain and faithfullie promittit me payment...".²⁶ The latter in a claim by Robert Robertson of Balachraggan for the sum of £8.8.8,

"Partly as the price of a boll of oatmeall bought by the defender from James Pulmar and Andrew Broun merchants in Blairgoury Croap 1738 and partly for other merchandise bought from them per accompt produced and for which I became Cautioner if not principall debtor and am stressed for the same."²⁷

Neither of these examples is directly concerned with the Cautioner debt which was that owed by the original debtor to the cautioner at the time of incurrence. Although

²⁶ SRO CC7/3/3/Bdle 4

²⁷ SRO CC7/3/56

this could become a material debt, as shown in the first example, it was at the most basic level a moral or diplomatic debt. The debt was moral if the cautioner undertook to stand as guarantor in the spirit of friendship, it was diplomatic if the cautioner was using it for 'political' purposes; to ingratiate himself, improve business or family relationships etc.

g) Dual-direction Debt

This is a simple relationship which featured thirty times in the data. It represents the situation in which one person is both in debt and credit to another - reciprocal indebtedness. At only 4%, this contrasts with Clark's findings at Writtle in which 17% of debts entailed this form of relationship.²⁸ It is likely that this is a reflection of the more concentrated population on which she focused. On the Grandtully Estate Group there would have been less opportunity for immediate exchanges between people than in the smaller and more close-knit situation in Writtle. In this relationship one debt is usually set off against the other as occurred in the claim described in 6.1.1 made by Patrick Cameron against James McFarlane.²⁹ Such debtor-creditor relationships were usually realised to facilitate the exchange of goods or services and were mutually benefi-

²⁸ Clark, E (1981) Debt Litigation in a Late Medieval English Vill, in Raftis, J A (ed) Pathways to Medieval Peasants, p270

²⁹ SRO CC7/3/61

cial whilst the exchange values balanced. Resorting to litigation was a response to the relationship becoming unbalanced.

h) Layered Debt

This debt structure contains more than one layer or level of indebtedness. Several claims showed this characteristic but one is particularly interesting as it also contains a dual-direction debt at one level. The claim was made in 1735 by Janet Borrie in Graystone. This is in itself significant because she was married to John Young, a portioner there, who was alive at the time of the claim. No other case was identified in which a woman with a living spouse pursued her own claim in court. In all other cases either the husband alone or the couple together, claimed on behalf the woman. In this case, Janet Borrie was pursuing a case against James Duff in Balinloan whom it was stated,

"Ought to be decerned to make pay[men]^t to Janet Borrie of the sumes of money uplifted by him belonging to Janet Borrie from the persons undermentioned.." ³⁰

Duff, she claimed, had collected money owed to her by six other people at Martinmas 1733. Her claim, a year and a half later, comprised £46.16.0 as that element, plus £6 which she had lent to Duff, £12 and the price of 4 ells of plaiding, £1.12.0, of unpaid fie. However, she admits to owing Duff £4 of unpaid wages. Thus, there was a

³⁰
SRO CC7/3/51(1)

dual-directional debt between the two, plus a double layer of indebtedness. Had Borrie's claim been simply made as a round figure against Duff, the layer of debtors who had originally owed the money would not have been identified. It is impossible to surmise the extent to which this happened but there is no reason to assume that this was an unusual circumstance.

The fundamental reason for incurring debts can be extremely elusive. Those made through buying meal, livestock, timber etc are generally the easiest to classify in this sense; usually they are subsistence debts. However, there are times when such sales may in fact be merchant debts - goods are bought for resale at a profit. Unfortunately this simply cannot be established from the available data.

The most readily identified of debts are those incurred for 'ceremonial purposes'. Coffins, food and drink for funerals, payment to the minister for a baptism and wedding expenses, all fall within this category. Sometimes, people had to turn to their laird or the church to help defray these costs. This happened in 1751 to John Stewart, a cottar in Croftcatt; unable to pay for his parents' funerals he turned to the Trustees of the Grandtully mortified fund, who paid him £12 as his

parents "while on life were very great objects".³¹ In other instances the ceremonial debt is hidden under the first layer of debt; as in the sale of fabric for a wedding dress. A claim made by Walter Steuart in Strathbran against the executor of Joseph McIldonich, (previously discussed in 6.1.2) was for the price of ten yards of 'Cambles' (Cambric).³² Only on further inspection does it become clear that the cloth was to make a wedding dress for his bride, Margaret Menzies. From this, and the documents discussed above, it is known that she was widowed within two years of her marriage, and that, ironically, this claim for the fabric was, amongst others, brought against her as her husband's executor.

The misfortunes of Margaret Menzies produce yet another example of ceremonial debt and point to its importance. When her child was born following her husband's death, she employed Duncan McDonald, a vintner in Dunkeld, to buy provisions. He rendered an account, which she was unable to pay, for: 12 bottles of ale; a barrel of ale containing 22 pints; a sheep, bread "baken in Dunkeld"; baptism money; his charges on the day that the crop was burnt; payment to a servant and a rental payment. In total this came to £1.13.0.³³ Despite being severely in debt to other creditors at the time the child was born

³¹ SRO GD121/43/229/1/28X

³² SRO CC7/3/76

³³ SRO CC7/3/76

6.1.2, Margaret Menzies had, nonetheless, had her baby baptised. The payment of ceremonial debts was critical in peasant societies. Social anthropologists have found the same pattern repeating throughout the world; time and again people will put themselves into debt in order to fulfil their own, and society's, expectations.

"....what it is essential to understand is that borrowing for defraying the expenses involved in, say, a wedding, a circumcision or a funeral, is not simply an individual whim. Such events are part of the way of life in that particular phase of the economy and society, and strong sanctions are brought to bear on a person who does not conform."^{3 4}

There remains the question of the existence of a socio-economic threshold. Does this source encapsulate people from every level of the peasant classes (as defined in the introduction)? Table 6.35 lists the debtors and creditors from the processes who could be identified by status or profession. Although almost a third of creditors and half of the debtors remained anonymous, information collated from the Estate Index and the Commissary Court material shows a complete domination of the small claims court by the tenantry - both as pursuers and defenders. The only other outstanding group being the merchants, as creditors. Women do feature strongly in both capacities but are twice as often debtors as they are creditors. If those who practiced a craft or trade are amalgamated they represent 14% of all creditors and

³⁴ Firth, R (1964) Capital, Saving and Credit in Peasant Economies, in Firth, R & Yamey, B S (eds) Capital, Saving and Credit in Peasant Societies, p27-28

Grandtully	Pursuer/Creditor		Defender/Debtor	
Group	No	%	No	%
Tenant	130	19.2	104	16.5
Liferent Tenant	12		26	
Sub-tenant	4		13	
Lairds/Factor	29	4.3	1	
Portioner	7		5	
Factor	8		1	
Tacksman	2			
Birlayman	1			
Officer	2		2	
Commissary	1			
Clerk	1			
Church	19			
Merchant	72	10.6	8	
Writer	27	4.0	2	
Minister	6		6	
Surgeon	5		1	
Tutor	1			
Excise Officer	3		3	
Gardener	9		1	
Maltman	8		1	
Maltster	5			
Miller	3		4	
Shepherd			2	
Vintner	7			
Brewer	8		3	
Baxter			1	
Glasier			1	
Shoemaker	32	4.7	6	
Sawmiller	1			
Wright	2		6	
Cooper			1	
Turner			1	
Mason	4		7	
Taylor	4		4	
Glover	1			
Lister	1			
Weaver	6		5	
Slater	5		9	
Smith	7		6	
Boatman	1			
Journeyman	1			
Labourer			1	
Servitor	12		7	
Servant			3	
Women	36	5.3	68	10.8
Unidentified	195	28.7	320	50.8
	678		629	

Table 6.35 The Status of Pursuers and Defenders from all Transactions

9% of debtors and, therefore, become more significant participants in the credit market than merchants, few of whom ever became debtors.

At the other end of the scale, however, only one labourer and one servant represent the landless classes. The cottars and the cottagers are completely missing (unless they are obscured by craft skills). That these groups, at least in the Lowlands, outnumbered the tenantry³⁵ suggests that some sort of exclusive socio-economic threshold did exist. If these people were not allowed or able to enter the peasant credit market, as described here, this inevitably leads to the suspicion that a subsidiary market was at work. Such a market would have been even more strongly dependent on credit extension based on payments in service or kind. It seems highly unlikely that the people were not sufficiently sophisticated to enable credit they merely had to do so within a different level of exchange. As with so much that refers to the landless classes this must remain supposition.

Finally, a brief mention must be made of the value of the debts pursued in the Small Claims Court. As already established (6.1.1) the monetary values quoted in claims do not coincide with the parallel market values of the time and cannot, therefore, be employed as a source for reliable price data. Clark found the same situation in

³⁵ Smout, T C (1969) A History of the Scottish People 1560-1830, p136

Writtle, where,

"Although debt plaintiffs rarely mention the problem of interest, they do indicate that cash claimed in court may have been more than the sum involved in the original transaction".³⁶

Unlike the Dunkeld situation Clark found that defendants would admit owing part of a debt and thus they acknowledged a purchase on credit, but not at the price stated. The final price reached was achieved by negotiation not by implementing a universally recognised margin. That the same occurred in the Scottish context seems inevitable but despite the £40 limit some 92% of all claims were made for £20 or less. As illustrated by Table 6.36, the cut-off point is very marked. This does nothing more than indicate the level at which most transactions occurred but they do show a striking consistency across the entire period.

³⁶ Clark, E op cit, p256

Period \ Values	£ 0.0.0 - 5.0.0	£ 5.0.1 - 10.0.0	£ 10.0.1 - 20.0.0	£ 20.0.1 - 30.0.0	£ 30.0.1 - 40.0.0
1680-89	51 (25)	14 (7)	16 (8)	4(2)	6 (3)
1690-99	14	14	10	1	3
1700-09	17	10	7	2	-
1710-19	20	11	6	-	2
1720-29	44	15	15	6	-
1730-39	75	32	29	5	1
1740-49	43	29	14	4	3
1750-59	47	30	10	3	4
1760-69	12	16	9	4	5
Total	323	171	116	29	24
% of total	48.7	25.8	17.5	4.4	3.6

Table 6.36 The Value of Small Claims in the Commissary Court Processes
(Bracketed values take account of the two year sample in the 1680-89 division.)

Chapter 7: Conclusion

The importance of debt and credit to the rural economy of eighteenth^{century}/ Scotland can hardly be over emphasized. To write off personal credit as "widespread but relatively minor if at times troublesome",¹ is to ignore its significance in its totality. What is primarily important is not an individual's debt of a few pounds for a cow, but the composite of all such debts and their function in the economy. As established here, the volume of credit enabled on the Grandtully Estates probably represented around 20% of the value of movable assets in the community. In England, Holderness found a similar, if slightly lower level. In other words, credit was not only lubricating the economy, it was enabling it to function. It is, in fact, highly unlikely that at any given time all outstanding credit facilities could be fully serviced by the amount of available cash in the area.

The credit market was also important socially. Although it has proved impossible to identify secondary meanings for most of the debts examined they undoubtedly existed. With the exception of ceremonial debts it is rare to find any indication of the nature of these secondary levels, but universally the credit market not only established

¹ McFaulds, J (1980) Forfarshire Landowners and Their Estates 1660-1690, Ph D University of Glasgow. p403

both horizontal and vertical lines of dependency, it also established lines of communication which once open would often have remained so irrespective of the reason for incurrence.

The primary function of credit in the agricultural economy was undoubtedly a response to the seasonal nature of the farming year. This was not necessarily a response to crisis or dearth but to the periods of cultivation or husbandry and growth which had to come before harvest and consequently, cash or kind income. The increased need for credit facilities during times of hardship has been shown (5.2.1), but this was a transient response to cope with shortage. Although at the time critical for survival, such fluctuations were temporary features on a permanently existing foundation of credit mechanisms and facilities.

At the beginning of this study the question of whether or not there was a 'will to lend' in the community was posed. This is probably the most difficult question to ask of the data. Like other secondary reasons it is impossible to identify from the documents alone. However, the prevalence of ockery witnessed by contemporaries before the legalisation of usury, and the marked lack of any professional money-lenders in the community, does go some way to suggesting that the facility to borrow was being offered within the system. In turn this suggests

that there certainly was a will to lend whenever possible. In all respects this would have been the healthier option for the community, offering as it did cohesive social and economic bonds but also guaranteeing levels of interest which could be borne by all.

The vast majority of debts incurred fell within the sphere of exchange designated as 'self-sufficiency and local exchange' in chapter 2. Although it has been impossible to illustrate this statistically, because the fundamental reason for a debt incurrence was rarely identifiable, the overwhelming level of debts incurred for purchasing basic necessities firmly establishes this as the most important sector of the peasant credit market. Moreover, the physical distance between debtor and creditor excluded almost all possibility of exchange with a wider area.

The use of loans was gradually but steadily increasing throughout the study period, suggesting both increasing economic sophistication and increasing literacy. This tendency indicates that there may have been a growing will to borrow for expansive purposes - to use the money to improve or increase capital equipment, buildings or landholdings. A much larger sample, examining the utilisation of these instruments of credit, would be needed to confirm this inference. Undoubtedly there was a growing ability to manipulate these means of exchange. Throug-

hout the period this increasing use of bills and bonds did not infringe on the sales component of the credit market, rather, it eroded the use of loans made without interest, whilst dues and social debts were gradually disappearing from the Small Claims Court. In relation to the social debts this was certainly a reflection of the changing attitudes of the law. No longer were injury, slander, theft etc being dealt with as debts, more and more they were being viewed as criminal, as opposed to civil, acts in the eyes of the judiciary.

The second sphere of exchange, 'Dues to laird and state', absorbed between five and fifteen percent of the need for credit, whilst the 'External Area' impinged hardly at all. It seems likely that these proportions would change according to the location of the credit network. In Lothian, for example, the 'External Area' would much sooner have had a stronger pull on the reserves of the peasantry. The purchase of material goods, such as furnishings or ornaments, featured rarely in the Grandtully Estates, happening almost exclusively at rousps wherein the items were already part of the local exchange economy. Or, on the other hand, such goods were bought for cash or kind and thus did not feature in the documentary record.

The strongest characteristics of the actual debt types identified related, not surprisingly, to the agricultural

economy of each estate. However, the marked division between these characteristics on the lowland and highland estates is noteworthy in that they so strongly parallel the produce of each. The argument for environmental determinism may have 'had its day' and its limitations thoroughly established, yet in this context the soil, climate and physical environment were chiefly responsible for the dominant features of the use of the credit market. Comparative studies of areas with markedly different economies would provide useful information about this effect, and any trends towards increasing diversification with increasing communication.

In retrospect, the division of this study into general and particular components both limited and enhanced the value of the whole. Both areas deserve substantially more work than it has been possible to achieve here, but to have detached one from the other would have restricted their respective worth. To have ignored the mechanisms of, and attitudes towards, debt would have severely restricted comprehension of function in the case study.

The choice of area and sources could, with hindsight, have been improved. An estate with surviving baron court records, and with equivalent Sheriff Court material, would have offered a much more comprehensive coverage of peasant indebtedness. Whilst a more thorough examination, year by year, of both the extracted and unextracted small

claims processes would have provided the opportunity for much more sophisticated analysis and deeper understanding of the whole. Nevertheless, the study has identified the strengths and weaknesses of both testamentary and small claims data for addressing questions concerning peasant indebtedness. In particular the recording of debts in testaments has been shown to be unreliable, and consequently their limitations as useful indicators of the characteristics of the credit market illustrated. On the other hand, the debt values recorded in the testaments, which had not gone to litigation, are almost certainly more reliable than those found in the process data which exhibit an intrinsic penalty component. However, of the two sources, the processes certainly offer the more comprehensive coverage of the types of debt being enabled in a farming community and the proportions thereof. They do not, on the other hand, offer a complete coverage of the characteristics of the debt/credit transactions undertaken by the poorest and landless classes. The existence of a lower level of credit exchange is not certain but the evidence found here certainly points in that direction.

Ultimately, it is important to remember that that part of the credit market looked at here represents a tiny part of the whole, but moreover, it represents a network of economic activity which was set into the matrix of

immediate exchange transactions. When possible, vendors wanted to be paid immediately in cash or kind. After all a person cannot eat credit. Enabling too many debts could be quite as disastrous as incurring them.

The results of this study have thrown up more questions than answers. That credit was indispensable and debt ubiquitous in the countryside of Early Modern Scotland was apparent at the start and remained so throughout. Beneath those facts, webs of social and economic complexity, which grew out of the remarkably simple phenomenon of debt, were soon identified but many of their attributes remained elusive. It was recently stated that debt "seems so straightforward that most historians have never thought to look below the surface";² it is hoped that this study has at least scratched it.

² Leneman, L (ed) (1988), Introduction to Perspectives in Scottish Social History: Essays in Honour of Rosalind Mitchison, p xv

APPENDIX 1

Common form of a Personal Bond¹

A typical ordinary, unsecured personal bond for borrowed money would usually have been structured as follows:

I, A.B., grants me to have instantly borrowed and received from C.D. the sum of £--, which sum I bind myself, and my heirs, executors and representatives whomsoever, all jointly and severally, without the necessity of discussing them in their order, to repay to the said C.D. or his executors or assignees at the term of -- within the [place], with a fifth part more of liquidate penalty in case of failure, and the interest of the said principal sum at the rate of -- *per centum per annum* from the date hereof to the said term of payment, and half-yearly, termly, and proportionally thereafter during the non-payment of the said principal sum, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the next term's payment of the said interest at the term of -- next for the interest due preceding that date, and the next term's payment thereof at -- following; and so forth, half-yearly, termly and proportionally thereafter, during the non-payment of the said principal sum, with a fifth part more of the interest due at each term of liquidate penalty in case of failure in the punctual payment thereof: And I consent to registration hereof for preservation and execution - In witness whereof.

¹ Chisholm, J (ed) (1933) *Green's Encyclopaedia of Scots Law* 2nd ed. Vol 2. p219

APPENDIX 2

Inventory of Debts due to the Deceast John, Earle of Dundonald²

£ 1800	owed by	Robert Graham, Provost of Dumfries
1192		David Montgomery of Langshaw
2760		Richard, Earl of Lauderdale
2601.13.4		Sir Adam Blair of Carberry
2000		Earl of Glencairn
1100		Brissbane of Rossland
266.13.4		James Erskine of Grange
3711		
11000	one bond	Holmstoun with Earl of Eglinton as cautioner
14666.13.4		To be paid after the death of Lady Tweedale
1000		Lord Blantyre
10000		Earl of Marr
400		Lord Cardross
<u>2666.13.4</u>		His Lordship with the Earl of Marr as cautioner
£55164.13.4		

² SRO GD233/108/1/1

APPENDIX 3

List of the overdue payments on bonds held by Sir Thomas Steuart of Grandtully

Nott of the Bondis with the bygone annualrent resting to
me Sir Tho^s Steuart This Nott is takine upon the 5th
December 1673³

John Robertson in Kerco / 3 years &rent	£ 49.11.06
Mungo Campbell of Seatt & Alexander Robertsons	
of Invar	133.06.08
John Forbes in Innerchochill	200.00.00
Patrick Campbell of Garrows was payable 1658	14.06.08
Marg ^t Crichtone in Drummourdy & W ^m Mcleise	
his son one year &rent	73.06.08
The relict of Alex ^r McDuff in Trochrie &	
John Malcome in greane of logie	13.06.08
[] Roberstsone in Fordie son to James	
Robertsons in Dillatore	34.00.00
A bond granted by the deceased John Smith	
sometyme in hill of Colra of £30 & £10 expenses	
to Andro Kippen in Slogenholl payable in 1657	40.00.00
Patrick Gibbin in Kerco payable 1655	25.15.04
James Doig in Innerchochill and Duncan Doig	
his son 310mks & £30 expenses + 1 year &rent	236.13.04
W ^m Brydie of Dungarthill £264 + £60 + 1 years	
&rent	324.00.00
James Tailyeour in Innerchochill and John	
Tailyeour his sone £213.6.8 + £40 expenses +	
1 years &rent	253.06.08
Donald McKenlay in Innerchochill £93.6.8 +	
£14 expenses + 1 years &rent	107.06.08
W ^m Bryddie in [] £250 + £40 expenses	290.00.00
John Burneman in Burnehouse of Airliwight £10	
+ £3.6.8 expenses	13.06.08
James Marr / Moorlandlay of £20 + £3.6.8 expenses	
payable 1667	23.06.08
James McDuff / Tulliepouries £20 + £6 expenses	
payable 1662	26.00.00
Donald Dow / Wester Inschewane £20 + £6 payable	
1669	26.00.00
Bailie Glass	200.00.00
Mr John Blair / Balmoill 500mks £20 expenses	
payable 1672 + 1 terms &rent	1666.13.04
Archibald McNab / Milntoune £200 + 1 terms &rent	
payable 1673	200.00.00
W ^m Stewart / Fongorth Collin Menzeas as	
c[au] ^t [ion]er 1000mks + 1 years &rent payable	
1673	1666.13.04
Euphane Hay relict of James Blair of Ballathy & James	

³ SRO GD121/45/241/16

and Mr George Blair her sones £189 + £30 expenses
 Payable 1673 219.00.00
 be the toun of Perth 1000mks p[ayable] 1668
 £40 expenses 709.13.04
 George Bishop / Dunkeld £133.6.8 p 1665 + 1 years
 &rent + £20 penaltie 153.06.08
 Charles Stewart commissary of Dunkeld £333.6.8
 p 1665 + 1 years &rent & £50 383.06.08
 Mr W^m Ramsay & Sir Alexander Menzes of Chathik
 cautioner of £700 p 1671 & £100 expenses 800.00.00
 Thomas Menzeis of Carse £610 p 1670 1 terms
 &rent £100 expenses 710.00.00
 Patrick Stewart / Ballaquhame of 1000mks 666.13.04
 Hendrie Anderson in Airliewight £30 + £10 expenses
 40.00.00
 Hendrie Anderson in Airliewight 47.00.00
 Robert Miller / Preiston £42 + £12 exp 1 terms &rent
 payable 1670 54.00.00
 John Watsone / Mureadstone £21 + £5 expenses 1 terms
 &rent 1670 26.00.00
 John Campbell / Glenorquhie £113.6.8 + £40 expenses
 1 terms &rent p1666 153.06.08
 James Crockat of Easter Ratray £214.12.0 + £30
 expenses p 1671 214.12.00
 Pat^k Campbell brother to deceased John Campbell
 Ednampbell £24.8 + £6 exp p 1671 30.08.00
 George Maile / Kerco £121 + £8 pennaltie
 p 1673 129.00.00
 James Mcpea £20 + £5 exp payable 1665 25.00.00
 John and James Watson / Brinsmoor £48.9 + £2 exp
 payable 1672 50.09.00
 Donald Anderson / Miln of Cultulich £133.6.8 +
 £20 exp payable 1671 153.06.08
 James Campbell / Fordie 100mks + £10 exp payable
 1658 76.13.04
 Peter Moirhed / Ruffell £60 + £8 exp payable
 1653 68.00.00
 John Hall £80 + £15 exp payable 1671 95.00.00
 Mr Namordis(?) 140mks grantet be John McDuff sometime
 in Tomgairne payable 1653 with £20 expenses 166.13.04
 Patrick Watsone / Murthlie £73.2.8 + £10 exp
 payable 1670 83.02.08
 George Thomson in Lochollie £20 + £4 exp payable
 1655 24.00.00
 Walter McCondachie / Inver £8 payable 1666 8.00.00
 Tho^s Stewart £125.6 + £15 exp payable 1670 140.06.00
 James Strachan £40 payable 1664 40.00.00
 Alex^r Robertson in Kerco £105 + £15 exp payable
 1670 120.00.00
 John Waterstone / Sloginholl £241.16.0 + £40
 exp payable 1653 281.16.00
 John Crichtone / Dunkeld £108 + £20 exp payable
 1660 128.00.00
 Sir Alex^r Menzies of Chatille £828 + £100 penaltie

payable 1672	928.00.00
James Mulling £800 payable 1660	800.00.00

APPENDIX 4

Ferguson's Proverbs of "Waisters and Debtors"⁴

He hes not

We may poind for debt but no for unkyndnes

He hes not ane haill naill to claw him

He hes not a penny to buy his dog a loaff

He is als poor as Job

He is als bair as the birk on Yul even

He begges at them that borrowed at him

He hes brocht his pleugh to a foot spaid

He hes brocht his pak to a pak pin

He is on the grund

His hair growes thugh his hood

He hes cryed himself dyver⁵

His purs goes lyk a linget⁶ pock

His back is at the wall

He hes not in goodis and geir so much as fyv schillings
and ane plack he dyvoris went to saen this

⁴ Ferguson, D (1641) Scottish Proverbs; collected in the latter half of the 16th century, p58

⁵ Dyver: a debtor or bankrupt.

⁶ Linget: linen

APPENDIX 5

Individual Case Study : Joseph Anderson (compiled using the Estate Index and other documentary sources

- 1732 Tenant of 2 acres of Colray in Barony of Murthly
Paid £23 and 1 reik hen⁷ (at that time he held approximately one twelfth of Colray).
- 1736 Working as a smith at the construction of Grandtully
(later Murthly) hospital.⁸
- 1737 28th June he received £50 for work done on the
hospital plus many receipts for work done.⁹
- 1740 Numerous receipts for smith work done at the
hospital totalling £266.¹⁰
- 1741 Was in charge of much of the work at the hospital;
making payments to workers and for necessary tools.
He signed the accounts 'I Joseph Andersen Smyth in
Collray...'. He had clearly reach a position of
trust and responsibility signing as he did, an
'Accompt of What was payd the Rubble Stone Quarriers
for the hospittle from week to week', an 'Accompt of
cash payd Workmen att the Hospittle by Joseph
Andersen for Casting the foundation serving
plaisterers' and an 'Accompt of Debursements...for
Necessaries to the Work at the Hospittle'. Also a
payment made to him of £48.10.0.¹¹
- 1744 Receives a 19 year tack on the 'Milns of Colrie and
Milnlands. Also to hold the 'Passage Boats of
Murthly and the Boatlands and Fishings.'¹²
- 1747 Now in Slogenhole
- 1752 At the roup of James Steuart of Kincairgie's
belongings, held at Slogenhole, Anderson was able to
purchase:
- | | |
|-------------------|--------|
| 1 milk cog | 0.04.6 |
| 2 weights | 0.03.0 |
| A bake board | 0.03.0 |
| 3 old spades | 0.14.0 |
| 1 flaughter spade | |

⁷ SRO GD121/87/1/19(14)

⁸ SRO GD121/43/228

⁹ SRO GD121/43/228

¹⁰ SRO GD121/43/228

¹¹ SRO GD121/43/228 (p2-3)

¹² SRO GD121/87/1/18

& shovell	1.10.0
4 cheists	3.11.0
6 trenchers	1.18.0
6 pewter trenchers	2.14.0
1 copper tanker	0.18.0
1 pirn wheel	0.08.0
1 table	1.16.0
1 mirrour	1.03.0
1 fixt bed	0.12.0
1 standing bed	3.14.0
1 standing bed	1.00.0
1 chimney pocker & tongs	4.04.0
1 bed	8.12.0
1 bell	0.07.0
2 old grates & some old bottle racks	2.02.0
1 branded stirk	6.00.0
1 branded cow	17.00.0
	<u>£58.13.6</u>

1761 Still in Slogenhole.

Claiming against 3 men in his capacity as Deputy Collector of Excise in the Parish of Caputh on 24th March:¹³

- 1 John Donald brewer in Kinloch, for brewing two quarters - £1.4.0 (sterling)
- 2 James Miller in Clunie, for brewing one quarter - £0.5.6 (sterling)
- 3 William Craigie in Castle McConcochy, for brewing two quarters - £0.16.0 (sterling)

(plus a quarter of expenses on each claim)

1762 Tenant of Slogenhole and Mills of Colray with a new 19 year tack commencing at Whitsun 1762. Also holding the slate and skaily' quarries.¹⁴

1763 Pursuer in small claims action against John Merton in Drumshirrack
Claiming payment of 19s 7½d (sterling) as the remainder of an unstated principal sum, plus one fifth expenses.
The claim was decerned

¹³ SRO CC7/3/77/(1)

¹⁴ SRO GD121/87/1/15/(3)

APPENDIX 6

'Goods and Gear' sold by Roup from the Estate of Joseph McIldonich in 1760¹⁵

1 straw scape	£00.02.00
1 leather	00.08.06
2 pair curracles	00.04.00
1 pair muck creels	00.05.00
1 pair peat creels	00.09.06
Summechs	00.08.00
1 Lint wheel	01.14.00
1 muckle wheel	01.02.00
1 syth	01.01.06
1 old syth	00.02.00
1 iron	00.08.00
1 horse tack and bridle	00.02.00
1 bed and rolling barrow	00.13.06
1 sledge	00.13.00
1 leather ox	00.16.00
1 tub	00.15.06
1 table	00.12.00
1 chair	00.09.00
1 chair	00.08.06
1 armed chair	01.03.06
1 chair	02.05.06
1 chair	00.09.00
2 grapes	00.06.00
1 steind	01.06.06
1 press	03.12.00
1 cheist	03.01.00
2 sacks	01.19.00
1 sack	01.01.00
1 canvass	01.03.00
1 pair sheets	00.14.00
1 plaid and cheesecheist	00.13.00
1 lock	00.10.00
1 lock	00.10.00
1 lock	00.12.06
1 crook	00.18.06
1 door	[blank]
1 door	00.08.06
1 cow and 1 stirk	30.03.04
1 cow	23.06.00
1 luey	16.06.00
1 cow	27.13.04
1 cow	30.06.00
1 horse	16.12.00
6 ewes and 6 lambs	25.04.00
" " "	24.00.00
" " "	19.00.00

¹⁵
SRO CC7/6/5/437

10 hoggs	23.15.00
1 sleigs	00.09.00
1 kirn	00.07.00
1 barrele	00.12.00
1 caad	00.08.00
1 caad	00.03.00
1 caad	06.06.00
1 caad	00.08.00
1 caad	00.04.06
2 plates	00.04.06
2 plates	00.06.00
1 bauldin	00.06.00
1 caad	00.05.06
1 heckle	00.16.00
1 pair cards	00.13.06
wool cards	00.10.06
1 pe[??]	03.01.00
1 pott	03.09.00
	<hr/>
	£286.13.02

APPENDIX 7

List of Rests of Rents due by Sir George Stewart's tenants and vasalls for Cropt and year 1755 and preceedings Given up by William Mackewan in his clearance from Cropts in 1754 and in 1755 and in preceeding Rests¹⁶

Grandtully

Lagg	John Stewart	£59.13.04
Craggan	Donald McLagan's subtenant	16.04.00

Strathbran

Tomagarrow	John McIldonich	25.08.04
Little Trochry	Donald Grasick (2 years)	24.06.06
Meikle Trochry	Donald Peddie subtenant to Robert McDuff	2.15.04
	John Murray	11.03.02
Deanshaugh	Donald Anderson	4.18.08
Borlick	James McKendlay	8.01.06
Tombain	James Stewart	8.00.00
Sallachill	William McLeish (2 years)	59.09.02
	John McIldonich (2 years)	65.11.10
	Duncan McIlonich younger	33.06.08
Pitleoch	Donald McLeish	2.07.04
Wester Ballintuim	James McLeish	10.06.02

Murthly

Pittensorn	James Morice	16.03.04
Meikle Obney	Donald Mackenzie (2 years)	17.16.02
	Thomas & John Dow	10.06.10
Easter Inchewan	John Donaldson (2 years)	25.08.08
Middle Inchewan	John Cameron	13.12.00
Fungorth	James Constable	27.16.04
Chappelmain	Agnes Stewart	0.06.08
	Andrew Donaldson	1.00.00
	Robert Robertson writer there	13.00.00
Easter Burnbean	William Young son to Donald	35.10.00
	John Archer	24.18.08
Byres	David Patton	8.13.10
	John Patton	39.09.08
	James Moir	20.14.08
	Christian Lamb & John Patton	13.15.00

¹⁶ SRO GD121/41/223/12

Airntully

Airntully	John Chapman's widow	25.01.04
	Alexander Howie	30.13.00
	James Burgh (5 years)	234.04.08
	Alexander Land	<u>12.08.00</u>
		£910.10.10

APPENDIX 8

Published articles which include material
extracted from this thesis

PERSPECTIVES IN SCOTTISH SOCIAL HISTORY

**essays in honour of
ROSALIND MITCHISON**

edited by Leah Leneman

ABERDEEN UNIVERSITY PRESS

Debtors, Imprisonment and the Privilege of Girth

Lorna Ewan

The right of Sanctuary, or, as it was known in Scotland, the Privilege of Girth, has been romanticised by many writers, not least the idealistic Victor Hugo.¹ In pre-Reformation Europe, however, the 'Sanctuary' played an entirely functional role in the judicial process. In general terms a person who had committed, or was suspected of having committed, a crime, could take refuge in a church or area of consecrated ground. There followed a period of grace, usually forty days, during which the official legal procedures could be set in motion. At a time when justice was often a private and personal matter the existence of sanctuaries enabled 'an alleged offender to escape his private avengers and ultimately seek refuge in public hands'.²

Throughout Europe the concept of sanctuary, as a recognised component of the law, was largely rejected around the time of the Reformation; Francis I abolished the Right throughout France in 1539, the Papacy withdrew it from assassins, heretics, traitors, brigands, and those who stole from churches or on highways in 1591, whilst in England an act of Henry VIII, passed in 1540, so prescribed the function of sanctuary it was rendered invalid.³ However, in Scotland the Right of Sanctuary, as a legally recognised institution, was retained at Holyrood in Edinburgh. This was no archaic legislative relic, but a privilege which featured in the judicial procedure until the late nineteenth century. The reasons for this conscious retention of a system, which had been discarded throughout the rest of Europe must be sought in the Scottish attitude towards debt and indebtedness—after the Reformation only debtors could claim the Right of Girth and seek asylum at Holyrood.

The Scots have long invoked their God to forgive them their debts as they forgive their debtors, but until the Victorian era the sin was not to be *in* debt but to be unable or unwilling to pay. That there should ever have been any shame attached to the mere fact of being in debt is in itself remarkable. The concept of credit—deferred payment or over-trading—exists in the most primitive, non-monetary economies.⁴ To lend goods and services and, with more sophistication, currency, without an immediate return but with the promise of repayment is an essential component of any but the crudest

'immediate exchange' system. Thus indebtedness, be it in cash or kind, is an inevitable feature of life in societies dependent on agriculture for food and on the use of raw materials for other industries; 'In a world where seasons are uncertain and six months intervene between sowing and harvest, the need of advances was not the invention of man; it was inherent to the nature of things'.⁵ This intrinsic facet of life has long been recognised and understood, not least by the authors of the Old Testament; both biblical law and the prophets were concerned with protecting debtors especially in times of shortage following crop failures.⁶

For the Scots, the vocabulary of debt was so widely understood and accepted, that in 1596 the parish minister of Kilrunny in Fife was able to expound the doctrine of the Covenant in the form of a corporate catechism, specifically 'for the use of the people',⁷ structured as a metaphor using the idea and vocabulary of debt: '... for Chryst is the Cautioner of the Covenant and Contract for us, an sa principall deatter, taking the sam upon him to satisfie in all whar we ar unable'.⁸ It is surely implicit that the minister was able to assume complete comprehension of the terminology by his congregation before employing it to teach what was, after all, a fundamentally important element of his theology.

Credit, and therefore debt, was certainly neither new nor strange to the people of Scotland. Credit was an inevitable and essential lubricant to the agrarian economy of the time, exposed as it was to the 'recurrent hazzards of the calendar, many seasonal disasters and long waiting periods: one had to plough before one could sow, sow before one could reap, and so it went on, interminably'.⁹ This need for credit permeated the complete social spectrum. Although incurred for different reasons and in different ways by each social group, debts were ubiquitous, expected and accepted.¹⁰ Every tenant or labourer, artisan or merchant, minister or laird, owed or was owed either goods, money or service at some time in his life. From testamentary evidence alone it is clear that very few people died without debts 'restand awand be or to'. For example, of 120 seventeenth- and eighteenth-century testaments relating to the Grandtully estates in Perthshire only nine did not record any unresolved transactions in the testator's estate.¹¹ Similarly, 200 seventeenth-century testaments, examined from the Panmure estates in Forfarshire, indicated that 69 per cent of the testators died as creditors and 70 per cent as debtors.¹² Furthermore, the ever litigious Scots were seldom slow to claim against tardy debtors in the Commissary and Sheriff Courts—a vast corpus of evidence from the consequent processes substantiates the impression that indebtedness was an everyday occurrence. From the small claims court of the Dunkeld Commissariat alone, 12,811 processes have survived from the period 1680 to 1765.¹³ A sample of these taken across the entire period indicated that many of the processes contained multiple claims, the average being 3.85. Although this can only provide a very rough guide these figures suggest that around 50,000 claims were made in the area over the period—approximately 580 each year.

As these documents merely represent those processes which have survived, do not include claims for debts of over £40 Scots, and exclude all those

debt/credit transactions which were settled without recourse to law, they only reflect one tiny thread in a vast and complex network of indebtedness. This network extended across class boundaries and throughout both town and country. The nature of the transactions did, however, tend to change from one end of the social spectrum to the other; amongst the less well-off debts were often both incurred and ultimately paid in kind, whilst the wealthy generally employed bonds and bills of exchange.

This is not to suggest that debts were not frequently incurred across social boundaries. It was by no means uncommon to find tacksmen and tenants lending to their laird. Wadsetting was often the vehicle for such loans. This was a type of mortgage in which land was allocated as security in return for a sum of capital and low annual interest payments. As the redemption of a wadset necessarily involved repaying the capital this was one of the few ways in which landownership could move down the social hierarchy—the impecunious debtor could often be persuaded to convert the wadset into a feu for a relatively small payment.¹⁴ Contracts of bond¹⁵ were, on the other hand, largely, but by no means exclusively confined to transactions between members of the upper classes. Tenants could hold land by 'bond and tack' and often borrowed and lent by bond; of the 120 testaments examined which related to the Grandtully estates 15 contained bond transactions concerning tenants or sub-tenants. The practice was sufficiently frequent for some loans to be specified as being 'without bond'.¹⁶

References to indebtedness, by bond, between members of the nobility are legion. Some landed families succeeded or failed according to their money-lending skills; the 1st Earl of Dundonald, William Cochrane 'was making advances to impecunious noblemen'¹⁷ during the 1640s and 1650s. By 1726 John, Earl of Dundonald, was owed, at least, £55,164.13s.4d. Scots, by other members of the nobility, in bonds dating from as far back as 1678.¹⁸ Reflecting that the total hard currency of Scotland was believed, by contemporaries, to be around £9,600,000 Scots when funds were being raised for the ill-fated Darien scheme,¹⁹ Dundonald's credit holding was indeed remarkable, and he was by no means alone. The significance of such credit holdings was not in the fact of their existence, nor in their size, but in the need for such a facility.

The ability and possibility to borrow was essential to lairds and their immediate subordinates, the tacksmen, factors, etc. Estates could not be run without credit, 'all estates accumulated debts, sometimes so heavy as to tie up the whole rental... on a sample of nine estates, on all except one, the value of the estate, at twenty years purchase, was less than the total creditors' claims'.²⁰ In general, however, as long as the interest was paid, creditors would not call in their capital. In 1673, for example, Sir Thomas Stewart of Grandtully was owed £12,900.6s.6d. Scots in 56 outstanding bonds,²¹ but his main concern was with the annual-rent (the term for interest payments in Scotland).²²

The practice of lending at interest—usury or ockery in Scotland—had long been condemned by the clergy and was illegal until 1587. Apparently straightforward theft was hardly felt to be more of a transgression:

Thay sine aganis the comand [8th commandment] that comittis thift or okker or ressis fra oders throw power and strintht . . . Thay that holdis thair seruandis feis fra thayme thay that denisz thair dettis and wil noth pay thair crediturs/thay that will not help thair nichtburs in thair necessite ad will notht len to thayme in thair mister without okker money or service or reward.²³

Nevertheless, as early as c1425 the Scottish parliament, presumably recognising the need for credit facilities, enacted legislation which specified that if a usurer desisted and repented no penalty would be inflicted and usurers would normally be convicted posthumously.²⁴ The law-makers were in a difficult position; being sufficiently sophisticated to appreciate the need for credit, in order to enable trade to grow and flourish, whilst still having to condemn usury as an immoral and, therefore, illegal practice for as long as the church and the pious stood out against it.

To the church anyone was 'an usurer that by contracte taketh but one penny over and above the principall in respecte of tyme, and [is a] deadly synner before God'.²⁵ Time was thought to belong to God alone and, therefore, could not be sold, but it was. Under every conceivable disguise and using every possible surrogate, interest was charged. Fictitious partnerships, excessive security, interest paid in kind or personal labour and even deliberate error were all common means of exacting usury. It could even be disguised as 'full board': 'a man who is possessed of an hundred golden or sun crowns, will lend them to a merchant, for which the merchant will maintain him for a whole year in his house, and at his table, and at the end of the year will return him his money'.²⁶

Usury seems to have been ubiquitous in Scotland, both geographically and socially and both before and after its legalisation. However, the vast majority of these transactions were not made with a professional money-lender but with people who made their living by other means—people who would lend at interest when they could. Ockery was, for the most part, a 'bye-employment' rather than a profession. The Privy Council Register of 1611 substantiates this view.²⁷ Of 31 prosecutions for ockery in Perth the professions of those charged were listed as:

Burgess	1
Cordiner	1
Lister	1
Baxter	2
Tailor	2
Not specified	2
Weaver	2
Maltman	3
Widow	3
Skinner	6
Merchant	8

It is also interesting to note that in the same year eight ministers were summoned in front of the Privy Council, elsewhere in Scotland, on charges

of ockery.²⁸ The crime certainly seems to have been both habitual and ineradicable in the Scottish populace. After its legalisation the continuing condemnation of usury was more apparent than real. In 1616, the presumably rather disheartened cleric, Wolfgang Musculus, commented that 'the Diuines shall reforme Vsurie when Physicians have cured the Gout: the sinne and the disease as both incurable'.²⁹

Lending and borrowing was such a common occurrence that irrespective of its form, indebtedness was an unquestioned and accepted feature of the economy at all levels. Until it became apparent that the debtor was unable or unwilling to repay his debts he remained part of the vast economic matrix. However, once the debtor had either to seek refuge from his creditors or succumb to the judicial process, Scotland's unique approach to debtors as a criminal group becomes apparent.

The Debtors Act of 1880 saw the final abolition of imprisonment for civil debt in Scotland (imprisonment for debts of less than £8.6s.8d. had been abandoned some 45 years earlier). This abrogation of arrest for civil, non-fraudulent debt marked the end of a fascinating sequence of legislation. The legal position of the debtor had become characterised by what seemed, superficially, to be an inconsistency in the law. The division was encapsulated in Bell's dictum pertaining to debtors, 'The spirit of the law in Scotland is mild, in regard to the imprisonment of debtors: while it is sufficiently vigilant to prevent fraudulent absconding'.³⁰ There was certainly a substantial body of law which discouraged creditors from having their debtors incarcerated; from 1654 onwards there had been rigorous attempts to moderate the laws against debtors.³¹ Cromwell and his council were particularly active in providing relief for debtors but most significant was the 'Act of Grace', passed by parliament in 1696. This stated that:

Creditors imprisoning debtors who cannot alimnt themselves must provide an alimnt of at least 3s. a day or consent to their liberation, if they refuse the magistrate w(i)t(h)in 10 days [will] set the prisoners at liberty w(i)t(h)out being liable for the debts.³²

The basic principle of this Act remained in law until 1880; although by the time Howard visited Scotland's prisons in the 1770s the magistrates usually ordered an alimntation payment of 6d. (sterling) per day. After 1825 the incarcerating creditor was bound to pay a deposit for any alimnt ordered; the award of alimnt depending on the status of the prisoner. Once the deposit of 10s. was spent the debtor was freed if no further sum had been lodged.³³

A further deterrent to the incarceration of debtors was the additional charge for 'caption'—the warrant for the apprehension of a debtor—which was paid by the creditor to the gaolers. This fee varied but was commonly 2s.6d. or 5s. (sterling) or, as in the Edinburgh Tolbooth 6d. per £1 of debt.³⁴ Furthermore, by the process of *cessio bonorum*³⁵ a debtor could obtain his liberty after one month in prison by surrendering all his effects to be divided among his creditors. Later, if the debtor's circumstances improved, his belongings might still be subject to the claims of his creditors.

This was sensible as well as compassionate legislation. A debtor could rarely hope to improve his affairs from inside a prison whilst a creditor could always use alternative law to prosecute for payment; very different from the English situation where a debtor was imprisoned until he had paid 20s. in the pound.³⁶ English law never supposed that a man could not pay what he owed.³⁷ This led to the establishment of institutions such as the King's Bench prison which was populated entirely with debtors who often languished there for the remainder of their life.

The Act of Grace must also have gone a long way towards preventing 'vexatious litigation'; there was little point in having to support your debtor in prison if there was no prospect of ever being paid—however much personal animosity might be involved. Although Howard and other commentators saw Scotland's law on debtors as compassionate, self-interest was probably the main motivating force behind the Act of Grace. Parliament was clearly determined that neither the exchequer nor the royal burghs should pay for the upkeep of debtors and indirectly was attempting to reduce the prison population. In fact, the Act operated so as to mitigate the law of imprisonment for debt. The state clearly preferred creditors to utilise the alternative legislation available which enabled them to poind³⁸ for debts and distrain goods and land. Parliament was, however, always aware of its own interests, declaring no less than three times that it would be usurious, and hence illegal, for creditors not to grant to their debtors the 'retention of a proportion of their annual rents for payment of taxation'.³⁹ Also, as long as a debtor had other goods or lands his horses and oxen which he used for ploughing could not be poinded by his creditors.⁴⁰ The authorities had no desire to swell the number of destitute people.

If debtors were actually imprisoned, despite the legislative discouragement, the second half of Bell's dictum on the law relating to debt, that 'it is sufficiently vigilant to prevent fraudulent absconding' is seen to reflect a particularly harsh piece of legislation. Although debtors could be scourged or put in the stocks, long periods of imprisonment were, particularly prior to the Act of Grace, also a common punishment for the impecunious debtor. This in itself was not unusual but in the case of debtors it was specified, in law, that they would be allowed no fresh air or exercise. Known as *squalor carceris* the law specified that,

After a debtor is imprisoned, he ought not to be indulged with the benefit of the air, nor even under a guard; for Creditors have an interest, that their debtors be kept under close confinement, that by *squalor carceris* they may be brought to pay their debt.⁴¹

The evils of this legislation were undoubtedly compounded by the fact that in the event of a debtor escaping, his gaoler—and through him the magistrate who issued the warrant—was responsible for the debts of the escaped prisoner. As this remained on the statute books until 1839 debtors were frequently, 'consigned to the closest and most severe confinement . . . often crowded together in a close and fetid room which [they were] never allowed

to quit'.⁴² This then was the other side of the coin; for those debtors who were imprisoned despite the Act of Grace and subsequent related legislation, captivity was peculiarly horrible.

For some hard pressed debtors there was an option. If it could be attained the privilege of sanctuary offered some degree of refuge. A person retiring to sanctuary was automatically protected from diligence for the first twenty-four hours after his arrival. During that time he had to be booked into the sanctuary and obtain an official protection which in 1800 cost two guineas. Describing this process in 1801 Peter Halkerston, then bailie of the abbey and sanctuary, wrote 'When a protection is demanded it is always granted and upon production thereof, the officers of the jurisdiction, the constables of the bounds, the Abbey guards and the whole inhabitants are bound to turn out and protect the debtor'.⁴³

Sanctuary had not always functioned so smoothly. Little is known about the actual workings of the original Right of Sanctuary or, as it was known in Scotland, *Girth*. The privilege was certainly not originally intended for, or used by, debtors although ultimately its use became exclusively theirs. The Right of Girth had ancient origins. Skene suggests it was already an accepted system by the sixth century AD.⁴⁴ Initially it was a privilege extended only to those who had killed someone, enabling them to flee to designated areas of royal or ecclesiastical lands. There, 'the shedder of blood could obtain . . . not only protection but fair trial and restriction of the range of the blood feud from which he fled'.⁴⁵ At face value this may seem to provide a loophole through which felons could escape, but in fact it was a means of ensuring non-partisan trial in an age of often local, biased and all too swift 'justice'. For pursuers to violate sanctuary was in Celtic society a capital crime.⁴⁶

All parish churches were considered to offer some degree of sanctuary. In theory the extent of such sanctuaries was limited to the Frith stool which stood beside the altar; anyone sitting on the stool was under the protection of the Mother Church. In practice, however, the extent of Sanctuary was much greater, often including the kirkyard and beyond, figuratively described as 'being within the shadow of the Frith Stool'.⁴⁷ The right of sanctuary provided in such situations seems to have been fairly ineffectual, often being violated by those who had no fear of the penalties of sacrilege. The most infamous of such violations occurred when John Comyn was murdered, in Greyfriars Church, Dumfries, by Robert the Bruce and his compatriots in 1306. The violation was recorded by Barbour,

He mysdyd thair gretly but wer
That gave na gryth to the awter⁴⁸

There was also a certain number of places which were granted the right of sanctuary by the sovereign—the Great Right. This was a special privilege bestowed by the king on religious houses of his choice. It could encapsulate substantial areas of land around these establishments where fugitives could seek the 'King's Peace'. The functioning of the Right of Girth in these places

was dependent on the presence of the religious household which was required to shelter and feed refugees.

The sites themselves were sometimes chosen because of a personal preference of the sovereign⁴⁹ but there also seems to have been some conscious attempt to provide a good coverage of the country basing the sanctuaries around main lines of communication. Such sites included the richly endowed hospital at Soutra, the monks' cell at Lesmahagow, the Preceptory at Torphichen, the ancient monastery at Dull, and St Duthac's in Tain. Records of the endowment of sanctuaries survive from the reign of David I but even by then the privilege seems to have been a long established concept.

In addition to ecclesiastical sites the Great Right could be bestowed on royal lands and residences. The evidence is scant but it seems likely that the right of sanctuary was bestowed wherever the royal court happened to be. This would ensure that the king was not deprived of the assistance or advice of his subjects should any civil action be brought against them.⁵⁰ The only royal sanctuary to endure, after the Reformation, was Holyrood.

The extent of areas designated as sanctuaries was usually marked by girth crosses and/or chains. Relics of the system have survived as place-names, such as Cross-chain Hill and Girthgate at Soutra, or are still extant, like the impressive girth cross at Dull or the remnants of the sanctuary wall of Holyrood. Others feature in the documentary record in some way: the girth cross which used to stand at the foot of the Canongate in Edinburgh, marking the boundary of the Holyrood sanctuary, was recorded for its alternative use as a place of execution. In July 1600 Robert Birrel noted that, 'Johne Kiriland of Waristone murderit be hes awin wyff and servant man, and her nurische being also upone the conspiracy. The said gentilwoman being apprehendit, scho was tane to the girth crosse upon the 5 day of Julii, and her heid struck fra her bodie at the Cannagait fit . . .'.⁵¹

Another noteworthy monument was Macduff's Cross which stood near Newburgh in Fife. It is supposed to have been a memorial to the defeat of Macbeth which, as it marked the restoration of an exiled king, conferred peculiar privileges on the clan Macduff, 'whose valour contributed to that event'.⁵² Whether or not this was the reason for its foundation the area certainly acted as a 'family' sanctuary.

The Croce of the Clan Makduffe dividis Stratherne fra Fife abone the Newburgh beside Lundoris. The quhilk had privilege and liberty of girth, in sik sort that when ony man-slayer, being within the ninth degree of kin and bluid to Makduffe sumtime Earle of Fife, came to that Croce and gave nine kye and ane Colpindach [a young ox or cow], he was free of the slaughter committed by him.⁵³

This privilege was certainly taken advantage of by those who fell within its jurisdiction, Sir Alexander de Moravia being only one of many recorded to have claimed its use, when he was accused of the murder of William de Spaldyne in December 1391.⁵⁴

The sanctuary offered by the Cross of Macduff seems to have been both more comprehensive and less democratic than that available elsewhere. In other places where the privilege of the Great Right had been bestowed

the only 'man-slayers' who could seek asylum were those who could claim 'Slaughter on suddeny'. This was a killing which had occurred in the midst of a violent quarrel or in a hot-blooded moment, otherwise known as 'chaud melle'. Of course any killer could claim 'chaud melle' and later when tried be found guilty of forethought murder.

Inside Sanctuary the Master of the Girth was responsible for the health, safety and welfare of fugitives. He had, nonetheless, a responsibility to the Crown, to support and maintain law and order, such that on receipt of a charge from the appropriate court he would relinquish the accused. Before doing so, however, the Master would demand adequate security (caution) for the fugitive's life and limb.⁵⁵ In this way the Great Right enabled the processes of law to function without the intervention of those attempting to 'take the law into their own hands'. Once under trial the accused would be convicted or acquitted under the normal rulings of the law.

From the records of the canons of Holyrood, it is clear that the privilege of girth was extended to all classes of men. At the time of David I, a charter was granted to the canons of Holyrood which indicated that if sanctuary was sought by someone whose right to the privilege was in doubt he could undergo 'ordeal by fire' or 'ordeal by water'. The former, endured only by the landed classes 'necessitated walking barefoot and blindfolded over red-hot ploughshares', the latter, undertaken by peasants involved the fugitive being bound hand and foot before being thrown into water; unlike the unfortunate 'witches' of later centuries, if he floated the refugee was judged to be innocent.⁵⁶

It is also apparent that the Master of Girth was bound to apply the rules of sanctuary equally to both masters and servants requiring him as it did.

. . . to deliver the runaway serf to his owner; but equally . . . to protect the fugitive from violence . . . the law recognising that the master had the right to take the serf out of Sanctuary, and to compel him to return to his home and servitude, but insisting that he had no right to mutilate or kill his serf, provided that any master who exercised his right to claim his runaway serf, must swear, before removing him from Sanctuary, that he would not punish the serf in life or limb.⁵⁷

Erskine suggests that under Roman law sanctuaries were, in fact, originally intended as a means of protecting slaves from the severity of their masters.⁵⁸

The efficacy of this endeavour towards equality in the eyes of the law cannot be judged. When it did operate as intended the Great Right of Sanctuary was undoubtedly an antidote to violence and disorder and must have defused many a volatile situation. Unfortunately the early records are too sparse to give any useful indication of the extent to which the Right was respected, violated or, indeed, used. Once again the most infamous of the violations involved the Comyns and the Bruce: having fled to sanctuary at Tain, Bruce's Queen and daughter were forcibly removed by the Earl William of Ross.⁵⁹ One of the few records of the use of sanctuary by an impoverished and probably indebted man can be gleaned from the Lord High Treasurer's Accounts for James IV, 'Item, to ane pure wyff at had hir husband in girtht in Torpechin, in elimise [alms], xliiis'.⁶⁰

Precisely when the Right of Girth was extended to debtors is uncertain. Erskine seems to suggest that since the establishment of Christianity, debtors have always had the right to flee from the effects of their creditors' diligence to the refuge of sanctuary.⁶¹ At any rate, legislation during the reign of Alexander II indicates this probably happened by the end of the thirteenth century.⁶²

Although the Reformation saw the abolition of religious sanctuaries, those in royal precincts continued to function. In practice this meant that only Holyrood remained in use. This may have been related to the absence of the King after 1603, the protection of his advisers no longer being necessary as it was in a peripatetic and Scottish based court. Thus, although the legal status of the Holyrood sanctuary was diminished, most of the changes applied to intentional lawbreakers and offenders in a capital crime; for the civil⁶³ debtor it remained a place of refuge.

The offered asylum was not, of course, without penalties. Until the Act of Grace was passed debtors retiring to sanctuary had no means of support, and on arrival any money in their possession was taken to pay creditors and the protection fee. In 1531, John Scot, 'a man neither polished by learning, nor accustomed to business, nor sufficiently shrewd for practising deceit',⁶⁴ was, as litigant in a defeated case, rendered bankrupt. He was shrewd enough, however, to take refuge at Holyrood but having no money could not subsist. In this instance the King, hearing of his case, intervened and ordered Scot confined for thirty days with only bread and water—it seems that Scot actually fasted for the thirty days, but his ultimate fate is unknown. This case was undoubtedly only recorded because of the King's intervention; for the destitute without support from friends or relatives, lack of food, clothing and shelter must have been a common problem. Subsequent changes in legislation support this view.

The provision of aliment to debtors in the Act of Grace applied not only to prisoners but also to those who had fled to sanctuary and

there is no instance on record of the Court of Session having refused the prayer of any person in sanctuary who sued for the benefit of the Act of Grace.⁶⁵

Having claimed the benefit of the Act of Grace all the inhabitants were bound, when desired, to execute a disposition *omnium bonorum* 'for behoof of all his creditors'.⁶⁶ If this was refused, and for as long as it was not fulfilled, then the debtor was not entitled to aliment. This was equivalent to the process of *cessio bonorum* required from imprisoned debtors.

Gradually the privilege of girth began to weaken, in fact if not in principle particularly when the means of apprehending a debtor altered to allow the creditor to breach the sanctuary boundaries:

According to the regular form, the messenger-at-arms touches the debtor's shoulder with his baton; after which he is held in law to be in custody; and should he thereafter escape and take refuge in the sanctuary, the messenger may follow and seize him there, and take him to prison.⁶⁷

For those who did attain sanctuary there must often have been a degree of permanency about the situation. Walter Scott's description of Whitefriars Sanctuary, although imaginary, may well have been based on the circumstances prevailing at Holyrood and a knowledge of its past.

The ancient sanctuary at Whitefriars lay considerably lower than the elevated terraces and gardens of the Temple, and was therefore generally involved in the damps and fogs arising from the Thames. The brick buildings by which it was occupied crowded closely on each other, for, in a place so rarely privileged, every foot of ground was valuable; but erected in many cases by persons whose funds were inadequate to their speculations, the houses were generally insufficient, and exhibited the lamentable signs of having become ruinous while they were yet new. The wailing of children, the scolding of their mothers, the miserable exhibition of ragged linens hung from the windows to dry, spoke the wants and distresses of the wretched inhabitants.⁶⁸

Although, as ever, verbose, Scott draws a vivid picture. Holyrood, like Whitefriars, must have been a remarkably unhealthy place; at the bottom of the hill, receiving all the rubbish and sewage of the growing town—disease would have been rife.⁶⁹

The extent of the privilege did, however, cover a circuit of about four and a quarter miles including Arthur's Seat and Salisbury Crag (Fig. 1), thus enabling refugees to take advantage of a substantial area of open countryside. Compared with the filth and confinement endured by those imprisoned under the regime imposed by *squalor carceris*, Halkerston suggests that those in sanctuary enjoyed the benefit of comfortable lodgings, salubrious air, and of 'extensive and romantic walks'.⁷⁰ Halkerston's remarks notwithstanding, much of the area, as today, would not have invited long-term residence.

There are indications that some residents did stay in the sanctuary on a semi-permanent basis; following the abolition of the right of sanctuary in England, soon after the Reformation, Holyrood was seldom without distinguished English characters, 'some of them gaunt, oldish gentlemen, seemingly brokendown men of fashion, wearing big gold spectacles, who now drew out existence here in defiance of creditors'.⁷¹ Holyrood certainly continued to offer asylum to refugees from the upper echelons of society until well into the nineteenth century. For three years between 1793 and 1795 Charles-Philippe, Comte d'Artois, the younger brother of Louis XVI, lived within the Abbey bounds being under threat of arrest for debts outstanding in England.⁷² Also, it is clear that the privilege was still fully functional when Halkerston, then bailie of the Abbey, was writing in 1820 although there is little to indicate whether or not the less well off could still seek refuge there.⁷³ With the protection fee at two guineas the truly destitute would have been unable to remain within the refuge for more than the preliminary and gratuitous twenty-four hours. Even for the 'better off' debtor it would be unwise to assume that taking the option of sanctuary was then, or had ever been, either easy or appealing. A debtor could travel outside the sanctuary limits on Sundays, when apprehension by creditors was illegal,⁷⁴ although there is evidence that

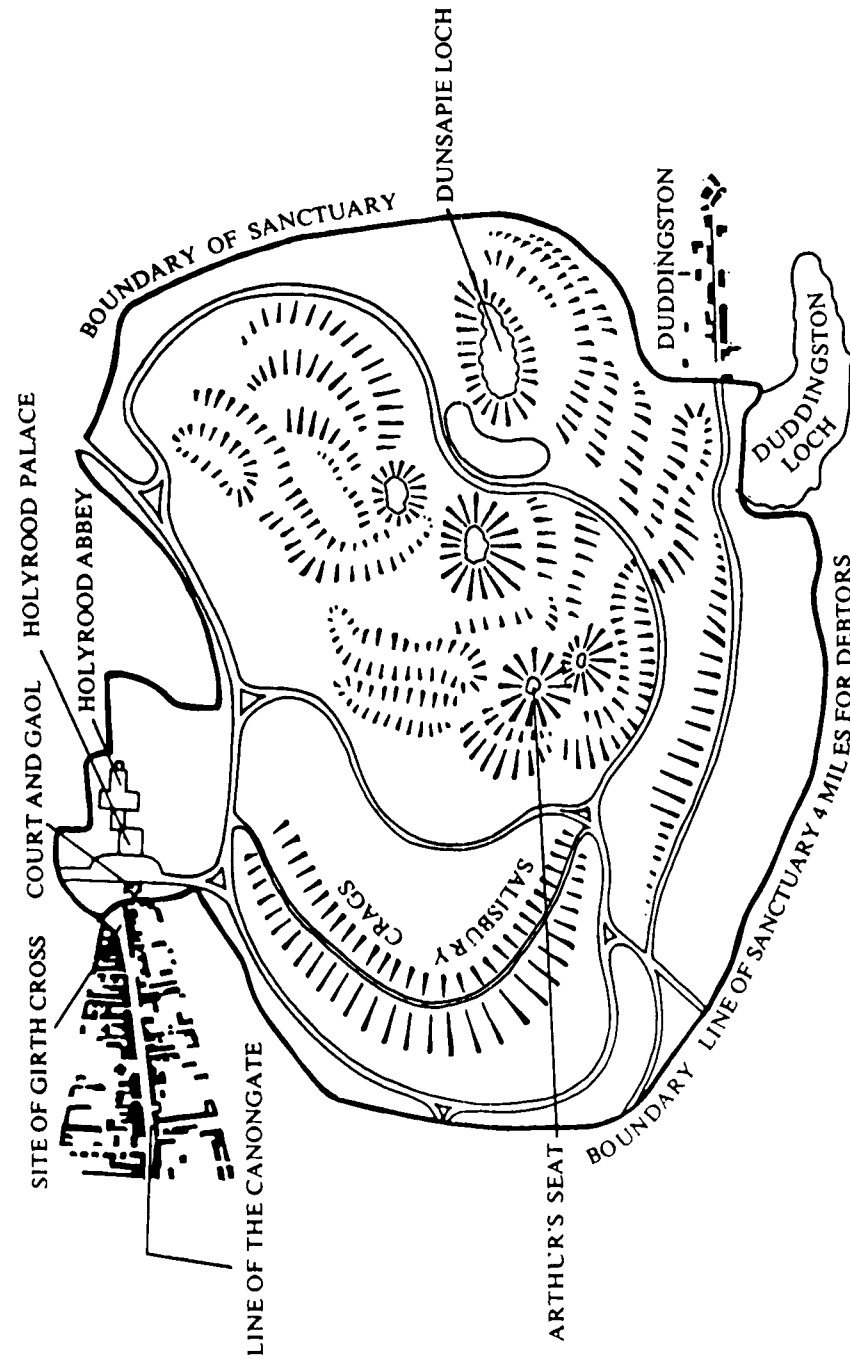


FIGURE 1 Holyrood Sanctuary, Edinburgh.

to leave sanctuary at all could be unwise: on 21 July 1709 the Court of Session heard a complaint from

a party . . . that he had been inticed on a Sunday by one of his creditors to come out of the abbay . . . and been detained by him at his house, under pretence of communing, till the clock struck 12 at night, and then taken captiue by a messenger, who the creditor had ready at hand . . .⁷⁵

Ironically, there was even a prison within the sanctuary precincts for those who incurred debts during their stay in Holyrood.⁷⁶

Following the Debtors (Scotland) Act of 1880 when imprisonment for debt became almost entirely unknown as a penalty, sanctuary too became obsolete although, technically, it remained in law. It will probably never be possible to establish the extent to which sanctuary was utilised by the debtors of Scotland but its very existence, and persistence, in the judicial system across so many centuries does invite the conclusion that it was seen as an important element of justice. This view is compounded by the frequency with which it features in the legislation. Even after the Reformation when its significance might have been expected to diminish, major bodies of law such as the Act of Grace indicate the continuing importance of sanctuary, specifically at Holyrood, and in relation to indebtedness. Debtors were not seen as criminals in the same way as other felons, debt was something which could catch up with anyone, from any section of society and in any part of the country. People lent and borrowed freely, often without caution (security) or with inadequate caution. The actual act of lending could be as much a social or diplomatic act as it was an economic transaction, concerned as much with cementing relationships and social dependencies as with rates of return.⁷⁷ The concept of Sanctuary, as it related to debtors, was simply a component part of this overall approach to indebtedness.

NOTES

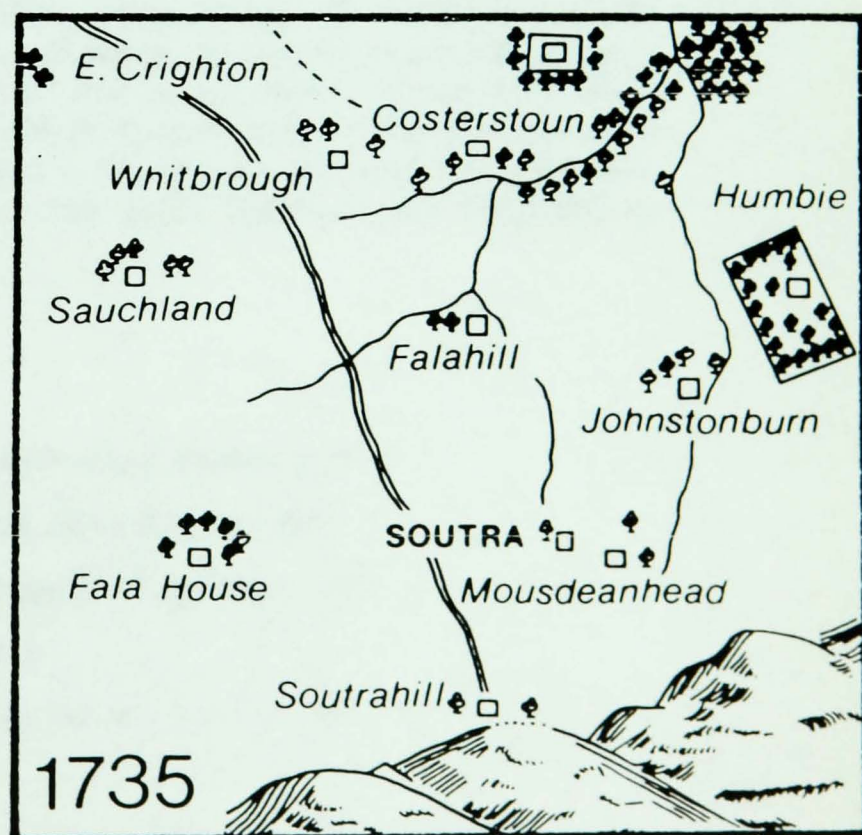
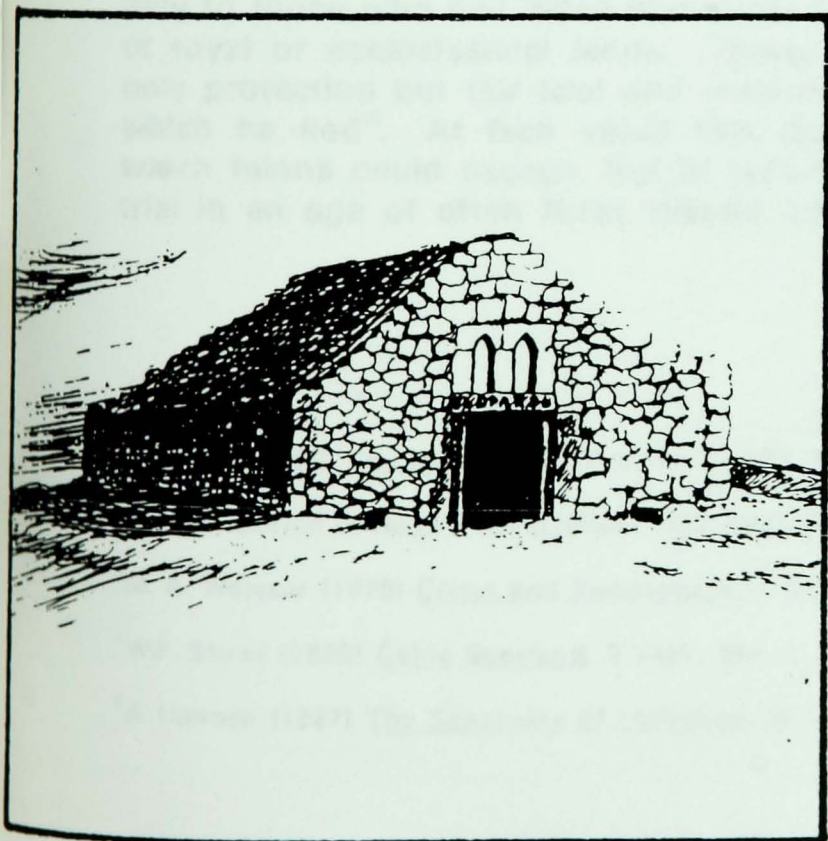
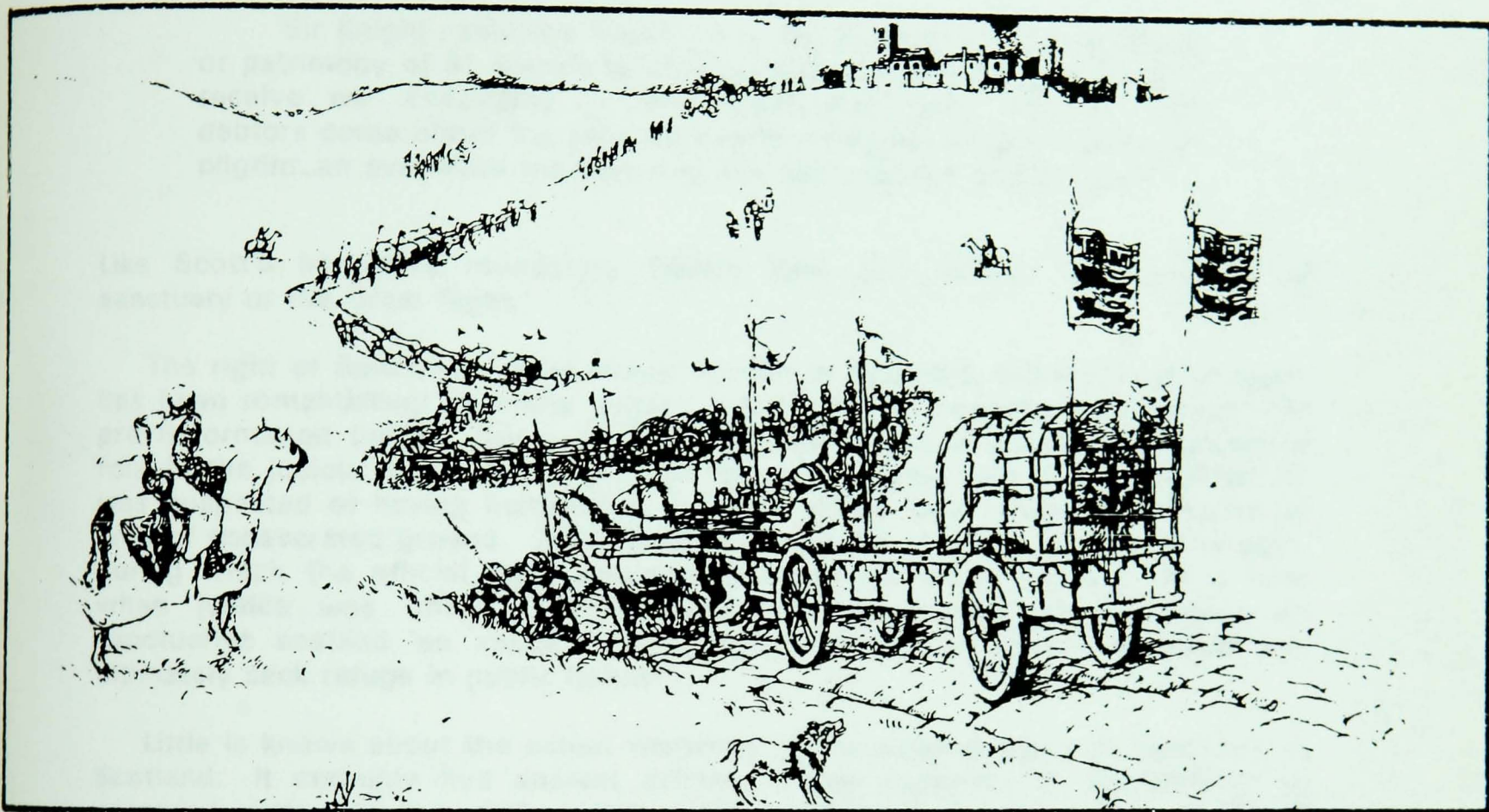
- 1 As exemplified in Hugo's novel about fifteenth-century Paris, *Notre-Dame de Paris*.
- 2 M R Weisser, *Crime and Punishment in Early Modern Europe* (Bristol 1979), p 55.
- 3 Although the 1540 Act was repealed in 1603 and common law restored, sanctuary was finally abolished as a legal institution in 1623-4; '... certain so called sanctuaries existed till the eighteenth century, which gave practical immunity to fraudulent debtors and even to criminals. They existed in spite of statutes passed to suppress them, and did not wholly disappear till the arm of the law was strengthened by the establishment of an efficient police system'. W S Holdsworth, *A History of English Law* (London 1903), vol III, p 306.
- 4 R Firth, 'Capital, Saving and Credit in Peasant Societies: A Viewpoint from Economic Anthropology' in R Firth & B S Yamey (eds), *Capital, Saving and Credit in Peasant Societies* (London 1964).
- 5 R H Tawney, in his introduction to Thomas Wilson's *Discourse upon Usury* (London 1925), p 19.
- 6 J Hastings (ed), *A Dictionary of the Bible* (Edinburgh 1898), vol I, p 579.
- 7 R Pitcairn (ed), 'Autobiography and Diary of James Melvill' in *Woodrow Soc* vol II (Edinburgh 1842), p 362. See also R Mitchison, *Lordship to Patronage: Scotland 1603-1745* (London 1984), p 27.
- 8 Pitcairn, *Diary of James Melvill*, p 365.
- 9 F Braudel, *The Wheels of Commerce* (London 1979) p 562.
- 10 For a complete classification of debts, types and reasons for incurrence see L Ewan, thesis on Indebtedness in Scotland (in preparation).
- 11 Scottish Record Office (SRO), CC7/6.
- 12 I D & K A Whyte, 'Debit and Credit, Poverty and Prosperity in a Seventeenth-Century Scottish Rural Community' (unpublished Conference Paper 1984) p 8.
- 13 SRO CC17/7/2-3.
- 14 B Lenman, *An Economic History of Modern Scotland 1660-1976* (London 1977), p 32.
- 15 'Bond is the name used to describe the deed (or clause or clauses in a deed) by which an obligation is undertaken. This obligation may be of any kind, as to pay, or to do, or to abstain from doing'. From J L Wark, *Encyclopaedia of the Laws of Scotland* vol 8 (Edinburgh 1929), p 300.
- 16 SRO, CC7/6.
- 17 S G Checkland, *Scottish Banking: A History 1695-1973* (London 1975), p 7.
- 18 From 'An Inventory of Debts due to the deceast Johnne Earle of Dundonald', SRO GD233/108/1/1.
- 19 Lenman, *Economic History*, p 50.
- 20 J Grant Michie (ed), 'Records of Invercauld 1547-1828' in *New Spalding Club* (Aberdeen 1901).
- 21 SRO GD121/45/241/16.
- 22 Ironically, his nephew Colonel John Steuart was to be imprisoned by his creditors some years later; W Fraser (ed), *The Red Book of Grandtully* (2 vols, Edinburgh 1868) vol II, p clxxxix.
- 23 J Gaw, *Richt Way to the Kingdom of Heuine* (c1533), in *Scottish Text Society* (STS) (Edinburgh 1888).
- 24 *Acts of the Parliaments of Scotland* (APS) 2 Reg Maj, vol I, p 618 c 46 (Edinburgh 1814-75).
- 25 T Wilson, *A Discourse upon Usury* (1572), R Tawney (ed).

- 26 As noted by Estienne Perlin in 1551-2 in P Hume Brown, *Early Travellers in Scotland* (Edinburgh 1891), p 77. The frequent occurrence of this sort of loan is substantiated by Fynes Moryson in 1598 when he comments, '... I have found that for the lending of sixtie pound, there wanted not good citizens who would give the lender a faire chamber and a good dyet as long as he would lend them the money'. *ibid*, p 81.
- 27 *Register of the Privy Council of Scotland* (1610-13) vol IX, p 348.
- 28 J Wormald, *Court Kirk and Community* (London 1981), p 126.
- 29 T Adams, *The Soules of Sicknesse* (London 1616), p 28.
- 30 G J Bell, *Principles of the Law of Scotland* 5th edn, sect 2315 (Edinburgh 1860).
- 31 APS vol VI ii (1654) 822 b, (1656) 759 a, 759 b, 760 a, 762 b.
- 32 APS General Index and vol X, (1696) p 66 c 32.
- 33 J Cameron, *Prisons and Punishment in Scotland* (Edinburgh 1983), p 62.
- 34 Cameron, *Prisons and Punishment*, p 61, and J Neild, *State of Prisons in England, Scotland and Wales* (London 1812), p 300.
- 35 *Cessio bonorum*: The ceding or making over of a person's property and effects to his creditors.
- 36 J Howard, *State of the Prisons in England and Wales with an Account of some Foreign Prisons 1777/1780 and 1784* (London 1929) p 147.
- 37 P Halkerston, *A Treatise on the History, Law and Privileges of the Palace and Sanctuary of Holyroodhouse* (Edinburgh 1801), p 50.
- 38 Poining was a diligence or form of law by which a creditor could endeavour to make good his payment. As the earliest diligence recognised in the law of Scotland paining enabled a debtor's moveables to be directly transferred to a creditor. Letters of paining could be used to remove goods from a debtor's lands and have them carried to the market cross of the head burgh of the sheriffdom where they were then sold.
- 39 APS vol IX (1690) p 236 b; vol X (1698) p 130 b; vol XI (1702) p 21 b.
- 40 APS vol II (1503) p 246 c 50; vol III (1581) p 217 c 14.
- 41 J Erskine, *Principles of the Law of Scotland* 21st edn, quoting Act of Session 14 June 1771.
- 42 J J Gurney, *Notes on a visit made to some of the Prisons in Scotland and Northern England* (London 1819), pp 107-8.
- 43 P Halkerston, *Treatise on Holyrood*, p 56.
- 44 W F Skene, *Celtic Scotland* (3 vols, Edinburgh 1880), vol II, pp 65-6.
- 45 A Hannah, 'The Sanctuary of Holyrood', *Old Edinburgh Club*, vol XV (1927), p 56.
- 46 Hannah, 'Sanctuary of Holyrood', pp 56-7.
- 47 P H R Mackay, *Sanctuary and the Privilege of St John* (Edinburgh 1976), p 5.
- 48 J Barbour, *The Bruce* c1374, STS (Edinburgh 1894) vol I, ii, p 44 (gryth and awter translating as girth and alter respectively).
- 49 One example of this occurred when Malcolm IV bestowed the Great Right on Innerleithen Church after his dead son had lain there overnight.
- 50 P Halkerston, *Treatise on Holyrood*, p 42, and J Erskine, *Institute of the Law of Scotland* (Edinburgh 1773), vol 4, p 25.
- 51 R Birrel, 'Diary of Robert Birrel from 1532 until 1605', in J G Davell (ed) *Fragments of Scottish History* (Edinburgh 1798), p 49.
- 52 G Chalmers, *Caledonia* (5 vols, Edinburgh 1824), vol II, p 466.
- 53 J Skene, 'De Verborum Significatione' quoted in *Liber Insule Missarum, Rannattayne Club* (Edinburgh 1847), pp xii-xiii.
- 54 *Liber Insule Missarum*, p xiii.
- 55 Mackay, *Sanctuary*, p 8.

- 56 Hannah, 'Sanctuary of Holyrood', p 59.
- 57 Mackay, *Sanctuary*, pp 8–9. This egalitarian ruling dates from the thirteenth century hence the use of the term 'serf'. In *Lectures of Scotch Legal Antiquities* Cosmo Innes noted that 'The last claim of neyfship or serfdom proved in a Scottish Court was 1364' (Edinburgh 1872), p 159, indicating that the term was in use until at least half way through the fourteenth century.
- 58 Erskine, *Institute* IV, pp 812–3.
- 59 G W S Barrow, *Robert Bruce* (Edinburgh 1976), pp 228–9.
- 60 J Balfour (ed), *Accounts of the Lord High Treasurer of Scotland* (Edinburgh 1902) vol IV, 1507–1513, p 189.
- 61 Erskine, *Institute* IV, pp 812–3.
- 62 APS Alexander II, vol I, p 401 c 9.
- 63 J L Wark, *Encyclopaedia of the Laws of Scotland* (11 vols, Edinburgh 1927) After the Reformation, 'The right of Sanctuary afforded protection to civil debtors only, and did not extend to debtors of the King, or to criminals (including fraudulent bankrupts), or to persons under diligence for performance of a fact within their power.' vol 8, p 40.
- 64 Hannah, 'Sanctuary of Holyrood', p 61.
- 65 *ibid*, p 84.
- 66 Wark, *Laws of Scotland* pp 8, 38. *Omnium bonorum*: a disposition conveying all the granter's goods of every description.
- 67 W Bell, *Dictionary and Digest of the Law of Scotland* (Edinburgh 1838).
- 68 W Scott, *Fortunes of Nigel* (Edinburgh 1831) p 198.
- 69 I H Adams, *The Making of Urban Scotland* (London 1978), pp 133–4, for a discussion of early sewage disposal in Edinburgh.
- 70 P Halkerston, Note Respecting the Sanctuary of Holyroodhouse in *A Translation and Explanation of the Technical Terms and Phrases used in Mr Erskine's Institute of the Law of Scotland* (Edinburgh 1820), p 94.
- 71 R Chambers, *Domestic Annals of Scotland*, 2nd edn (Edinburgh 1859), vol 1, p 97.
- 72 A J Mackenzie Stuart, 'A Royal Debtor at Holyrood', *Stair Soc*, Miscellany One (1971), pp 193–201.
- 73 With the rising price of the protection fee and, almost certainly, the effects of changing social attitudes, few of the truly destitute were claiming the Right of Sanctuary by the nineteenth century. However, it is interesting to note that Peter Halkerston, as bailie of the Abbey and Sanctuary, was still attempting to reduce the protection fee as late as 1801. He also mentions a register of those who had sought and been granted Sanctuary at Holyrood—no evidence of such a list being extant has been found.
- 74 Mackenzie Stuart, 'Royal Debtor', p 194.
- 75 Lord H H Kames, *The Decisions of the Court of Session from its first Institution to the present time* (Edinburgh, 1791) vol I, p 361.
- 76 Neild, *State of the Prisons*, p 199. In 1688 an attempt was made to have a prisoner there transported to another prison but the action was defeated 'because then his other creditors might have arrested him, which they could not do in the abbey', from Kames, *Decisions of the Court of Session*, vol I, p 361.
- 77 R A Dodgshon, 'Highland Chiefdoms, 1500–1745: A Study in Redistributive Exchange' (Unpublished Conference Paper 1985), p 15.

SHARP PRACTICE 2

THE SECOND REPORT ON RESEARCHES INTO THE MEDIEVAL HOSPITAL AT SOUTRA, LOTHIAN REGION, SCOTLAND



THE SANCTUARY IN MEDIEVAL TIMES

'Sir Knight', said the youth, 'it is the custom of this halidome, or patrimony of St. Mary's to trouble with enquiries no guests who receive our hospitalityWe know that both criminals and debtors come hither for sanctuary, and we scorn to extort from the pilgrim...an avowal of the cause of his pilgri- mage and penance'¹.

Like Scott's imaginary monastery Soutra held and offered the privilege of sanctuary or the Great Right.

The right of Sanctuary, or as it was known in Scotland, the Privilege of Girth, has been romanticised by many writers, not least the idealistic Victor Hugo². In pre-Reformation Europe, however, the 'Sanctuary' played an entirely functional role in the judicial process. In general terms a person who had committed, or was suspected of having committed, a crime, could take refuge in a church or area of consecrated ground. There followed a period of grace, usually forty days, during which the official legal procedures could be set in motion. At a time when justice was often a private and personal matter the existence of sanctuaries enabled 'an alleged offender to escape his private avengers and ultimately seek refuge in public hands'³.

Little is known about the actual workings of the original Right of Sanctuary in Scotland. It certainly had ancient origins; Skene suggests it was already an accepted system by the sixth- century AD⁴. Initially it was a privilege extended only to those who had killed someone, enabling them to flee to designated areas of royal or ecclesiastical lands. There, 'the shedder of blood could obtain...not only protection but fair trial and restriction of the range of the blood feud from which he fled'⁵. At face value this may seem to provide a loophole through which felons could escape, but in fact it was a means of ensuring non-partisan trial in an age of often local, biased and all too swift 'justice'. For pursuers to

¹W. Scott (1898) The Monastery, Waverly Novels, Vol. X (Dryburgh Edition), p129.

²As exemplified in Hugo's novel about 15th century Paris, Notre-Dame de Paris.

³M. R. Weisser (1979) Crime and Punishment in Early Modern Europe, Bristol, p55.

⁴W.F. Skene (1880) Celtic Scotland, 3 Vols., Vol. II, pp65-6.

⁵A. Hannah (1927) The Sanctuary of Holyrood, Old Edinburgh Club, Vol. XV, p56.

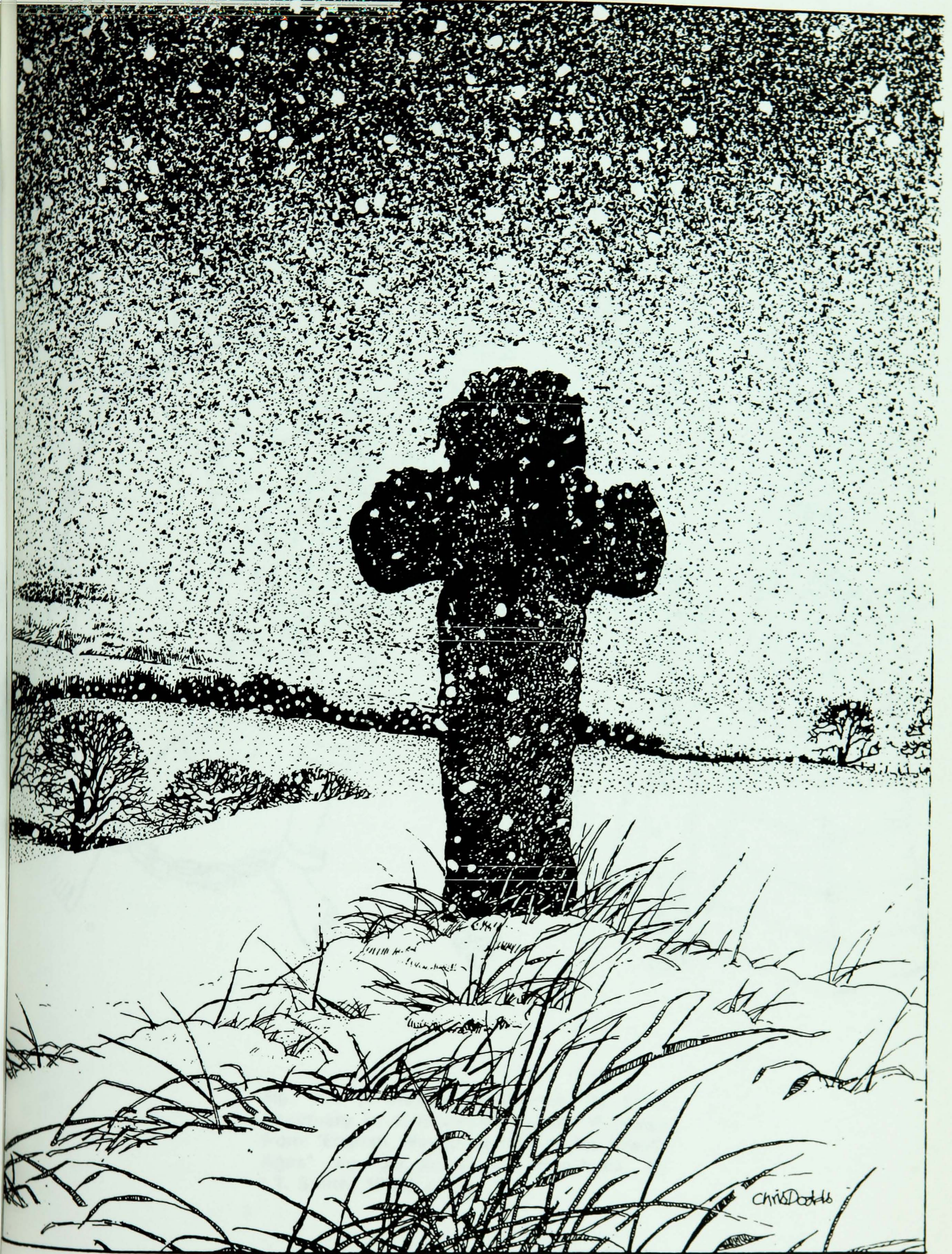


Fig. 21: The Sanctuary Cross [partly restored] at Dull, near Aberfeldy. Drawn by Chris Dodds.



Fig. 22: A Fleeing Bondsman [?] Finds Sanctuary in a Monastic House. Redrawn from "English Wayfaring Life in the Middle Ages" by J.J. Jusserand [translated by L.T. Smith; 1909], p.150.

violate sanctuary was in Celtic society a capital crime⁶.

All parish churches were considered to offer some degree of sanctuary. In theory the extent of such sanctuaries was limited to the Frith stool which stood beside the altar; anyone sitting on the stool was under the protection of the Mother Church. In practice, however, the extent of Sanctuary was much greater, often including the kirkyard and beyond, figuratively described as 'being within the shadow of the Frith Stool'⁷. The right of sanctuary provided in such situations seems to have been fairly ineffectual, often being violated by those who had no fear of the penalties of sacrilege. The most infamous of such violations occurred when John Comyn was murdered, in Greyfriars Church, Dumfries, by Robert the Bruce and his compatriots in 1306. The violation was recorded by Barbour;

He mysdyd thair gretly but wer
That gave na gryth to the awter⁸

There were also a certain number of places which were granted the right of sanctuary by the sovereign – The Great Right. This was a special privilege bestowed by the king on religious houses of his choice. It could encapsulate substantial areas of land around these establishments where fugitives could seek the 'King's Peace'. The functioning of the Right of Girth in these places was dependent on the presence of the religious household which was required to shelter and feed refugees. It was this privilege which was held by Soutra. Recorded in the 1164 'foundation' charter the Right was confirmed by Pope Gregory IX, nearly one hundred years later, in a charter dated 1236⁹.

The sites which held this privilege were sometimes chosen because of a personal preference of the sovereign¹⁰ but there also seem to have been some conscious attempt to provide a good coverage of the country basing the sanctuaries around main lines of communication. Such sites included Soutra itself, the monks' cell at Lesmahagow, the Preceptory at Torphichen, the ancient monastery at Dull, and St Duthac's in Tain. Records of the endowment of such sanctuaries survive from the reign of David I but, like the notion of sanctuary as offered by all churches, the privilege seems, even then, to have been a long established concept.

⁶Ibid., pp56-7.

⁷P.H.R. Mackay (1976) Sanctuary and the Privilege of St. John, West Lothian History and Amenity Society, p5.

⁸J. Barbour (c1374) The Bruce, Scottish Text Society, Edinburgh, Vol. I, ii, 44. (Gryth and awter translating as girth and alter respectively.)

⁹J. Hunter (1892) A History of the Ancient 'Domus de Soltre', pp37-8.

¹⁰One example of this occurred when Malcolm IV, who endowed Soutra, bestowed the Great Right on Innerleithen church after his dead son had lain there overnight.

In addition to ecclesiastical sites the Great Right could be bestowed on royal lands and residences. The evidence is scant but it seems likely that the right of sanctuary was bestowed wherever the royal court happened to be. This would ensure that the king was not deprived of the assistance or advice of his subjects should any civil action be brought against them¹¹.

The extent of areas designated as sanctuaries was usually marked by girth crosses and/or chains. Relics of the system, have survived as place-names, such as Cross-chain Hill and Girthgate at Soutra or are still extant, like the impressive girth cross at Dull or the remnants of the sanctuary wall of Holyrood. Others feature in the documentary record such as the girth cross which used to stand at the foot of the Canongate in Edinburgh, marking the boundary of the Holyrood sanctuary¹².

From the records of the canons of Holyrood, it is clear that the privilege of girth was extended to all classes of men. At the time of David I a charter was granted to the canons of Holyrood which indicated that if sanctuary was sought by someone whose right to the privilege was in doubt he could undergo 'ordeal by fire' or 'ordeal by water'. The former, endured only by the landed classes 'necessitated walking barefoot and blindfolded over red-hot plough-shares', the latter, undertaken by peasants involved the fugitive being bound hand and foot before being thrown into water; unlike the unfortunate 'witches' of later centuries if he floated the refugee was judged to be innocent¹³. It is also apparent that the Master of Girth was bound to apply the rules of sanctuary equally to both masters and servants requiring him as it did,

..to deliver the runaway serf to his owner; but equally...to protect the fugitive from violence...the law recognising that the master had the right to take the serf out of Sanctuary, and to compel him to return to his home and servitude, but insisting that he had no right to mutilate or kill his serf, provided that any master who exercised his right to claim his runaway serf, must swear, before removing him from Sanctuary, that he would not punish the serf in life or limb¹⁴.

Erskine suggests that under Roman law sanctuaries were, in fact, first intended

¹¹P. Halkerston (1801) A Treatise on the History, Law and Privileges of the Palace and Sanctuary of Holyroodhouse, Edinburgh, p50. The only Royal sanctuary to endure the Reformation was Holyrood.

¹²R. Birrel (1600) 'Diary of Robert Birrel from 1532 until 1605', in J.G. Dayell (ed.) (1798) Fragments of Scottish History, p49.

¹³A. Hannah, op. cit., p59.

¹⁴P.H.R. Mackay, op. cit., pp8-9. This egalitarian ruling dates from the thirteenth-century hence the use of the word 'serf'. In Lectures of Scotch Legal Antiquities Cosmo Innes (1872) noted that 'The last claim of neyfschip or serfdom proved in a Scottish court was 1364', p159. This indicates that the term was in use until at least halfway through the fourteenth-century.

a means of protecting slaves from the severity of their masters¹⁵. The efficacy of this endeavour towards equality in the eyes of the law cannot be judged. Even if it did operate as intended the Great Right of Sanctuary was undoubtedly an antidote to violence and disorder and must have defused many a volatile situation. Unfortunately the early records are too sparse to give any useful indication of the extent to which the Right was respected, violated or, indeed, abused. Once again the most infamous of the violations involved the Comyns and Robert Bruce: having fled to sanctuary at Tain Bruce's Queen and daughter were forcibly removed by the Earl William of Ross¹⁶. Whilst one of the few records of the use of sanctuary by an impoverished and probably indebted man can be gleaned from the Lord High Treasurer's Accounts for James IV, 'Item, to ane pure poor man that had his husband in girth in Torphechin, in elimese [alms], xliiis'¹⁷.

Of the sanctuary at Soutra nothing but the characteristic place-names and later references remain, but for the lifetime of the monastery the sanctuary it created was undoubtedly an important refuge for those fleeing from pursuers.

15. Erskine (1777) Institute of the Law of Scotland, Edinburgh, Vol. IV, pp812-3.

16. W.S. Barrow (1979) Robert Bruce, Edinburgh, pp228-9.

17. Balfour (ed.) (1902) Accounts of the Lord High Treasurer of Scotland, 1507-1513, Vol. IV, p189.

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Abbreviations

(exclusive of those previously specified)

AUP: Aberdeen University Press
CUP: Cambridge University Press
EUP: Edinburgh University Press
IBG: Institute of British Geographers
OUP: Oxford University Press

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Seafield Estate Records:

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 Measures, Coinage, Estate & Legal Terms
 and Customs and Central Administration,
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